

Edison, finding no defect in the product design and that the sensors did not cause Petitioner to crash. R. at 7. Nevertheless, if a jury had found that the limitations of the sensors qualified as a defect, Edison could be liable under traditional negligence law or under the officially recognized duty to warn. R. at 8, 13-14. In a design defect case like this one, it is necessary to analyze the manufacturer's conduct prior to the product's sale. *See* Fremont Rev. Code § 5552.321. An additional duty to retrofit would divide a jury's attention between the manufacturers' pre and post-manufacturing conduct, risking confusion of the issues. *Gregory*, 538 N.W.2d at 326. Rather than focusing on whether Edison knew of a defect that posed a foreseeable risk of harm, the jury would have to consider whether Edison should have improved the product after its sale. *See id.* The question of whether a manufacturer could or should have improved the product might infect the jury's determination about whether a defect was present at all. *See id.*

Where "traditional principles of negligence and strict products liability" are already present, imposing an additional duty upon manufacturers is unnecessary. *Loredo v. Solvay Am., Inc.*, 212 P.3d 614, 632 (Wyo. 2009). The existing theories for liability already hold manufacturers accountable and provide relief for injured parties. A duty to retrofit goes beyond protecting consumers, which is accomplished by the duty to warn, and requires companies to endure exorbitant costs any time safety equipment or technology improves beyond that of their existing products. *See Ford Motor Co. v. Reese*, 684 S.E.2d 279, 285 (Ga. Ct. App. 2009) (citation omitted). Such costs will likely be passed on to consumers in the form of increased prices. *Id.*

Edison originally expressed such concerns about cost increases with the Marconi when there was a risk it would no longer fit within the economy range of sedans. R. at 5. Requiring constant upgrades to account for the safety concerns of older technology, or to counteract a manufacturer's necessary balancing of safety and feasibility with any new products, could have serious repercussions. Besides crippling manufacturers financially, a duty to retrofit can reduce consumer access to new products, like the Marconi, that actually reduce the risks of car collisions from "lane drifting or unsafe lane changes."

R. at 5. Some of the leading causes of car accidents include driver inattention and distractions,¹ both of which can be mitigated by, first of all, keeping your hands on the steering wheel and looking straight ahead, but also sensors that detect other moving vehicles. *See* R. at 5. Creating a heavier burden on manufacturers by requiring them to recall and upgrade any products that implicate human safety could increase costs to consumers, possibly making safer technology unaffordable. This burden would also remove the incentive to develop newer and safer technologies, which would then require retrofit programs.

A continuing duty to retrofit was not recognized in the State of Fremont prior to the Court of Appeals' decision, and the existing theories of liability already satisfy the need to protect consumers from dangerous design defects. The addition of a duty to retrofit, which should remain in the hands of the Legislature and appropriate administrative agencies, would be counterproductive to the goals of product liability law. Therefore, the trial court did not abuse its discretion in refusing Petitioner's jury instruction that included the duty to retrofit.

B. The duty to retrofit devised by the Court of Appeals does not apply to Edison.

The Court of Appeals correctly held that the trial court's refusal of the jury instruction was harmless error, because Edison is not subject to the duty to retrofit, even if the duty is adopted. The Court of Appeals determined that the duty to retrofit exists only "where: (1) the product implicates human safety; (2) there is a continuing relationship between manufacturer and consumer; and (3) the manufacturer had knowledge of a defect after the product was in the hands of the consumers." R. at 15-16. In addition, the duty to retrofit should not require the incorporation of technology unavailable at the time of manufacturing, particularly where no defect existed at time of manufacture. *See Patton*, 861 P.2d at 1299, 1307.

1. There is no sufficient continuing relationship between manufacturer and consumer.

¹ Richard P. Console, Jr., *The Most Common Causes of Collision*, Nat. L. Rev. (Tuesday, Oct. 13, 2020), <https://www.natlawreview.com/article/most-common-causes-collision>.

Under the test devised by the Court of Appeals, Edison is not subject to the duty to retrofit in this case. Edison does not contest that automobiles of any type implicate human safety. This is why Edison included advanced safety features, like Autodrive, in its Marconi. *See* R. at 15-16. Further, Petitioner has not demonstrated that a defect has existed at any time. Edison does not deny that it was aware of the limitations of the Marconi's sensors, but sufficient evidence exists for a jury to determine there was no defect. Even if a jury found that a defect existed and that Edison was aware of it after it entered the hands of Petitioner, Edison and Petitioner lacked the requisite continuing relationship to activate any potential duty to retrofit. According to this test, “there is a duty to retrofit where . . . there is a continuing relationship between manufacturer and consumer.” R. at 15-16.

In *Noel v. United Aircraft Corporation*, the Court of Appeals for the Third Circuit held that there was a duty to retrofit because of the continuing relationship between the airplane manufacturer and the consumer. 342 F.2d 232, 242 (3d Cir. 1964). A defect in the propeller system caused the plane to erupt into flames when the pilot tried to dump fuel in flight. *Id.* at 234. The pilot was killed in the crash. *Id.* A safety device called a Pitch Lock could have resolved the defect; however, the Pitch Lock was not available at the time the propeller system was manufactured. *Id.* at 237. The manufacturer and consumer maintained a continuing relationship between the time of delivery and the time of the accident. *Id.* at 241. The manufacturer’s “field service department advised [the consumer] with regard to maintenance, overhaul and operation of the propeller system and supplied it with service bulletins supplementing manuals of instruction.” *Id.* The manufacturer’s expert witness explained that the manufacturer had to examine the product’s performance and any possible malfunctions, and if they detected one, they would be “obligated to take remedial action.” *Id.* at 241-42. Because this continuing relationship existed between the manufacturer and the consumer at the time of the accident, the court held there was sufficient evidence for the trial court to find there was a continuing duty to retrofit the engine. *Id.* at 241-42. The duty to retrofit, therefore, did apply. *Id.*

In *Gregory v. Cincinnati Inc.*, the Michigan Supreme Court held there was an insufficient relationship between manufacturer and consumer to trigger the continuing duty to retrofit used by the court in *Noel*. 538 N.W.2d at 336 (citing *Noel*, 342 F.2d at 241). Between the time of sale and the time of the accident, there were two service calls, attended to by service technicians rather than “safety representatives or sales persons.” *Id.* During these services, the manufacturer never acquired physical control of the product. *Id.*; see also *Bell Helicopter Co. v. Bradshaw*, 594 S.W.2d 519, 532 (Tex. Civ. App. 1979) (holding sufficient relationship to establish continuing duty to retrofit when manufacturer regained control of product). Cincinnati also sent “nearly thirty mailings documenting various safety options,” which had likely been sent to all Cincinnati customers. *Gregory*, 538 N.W.2d at 336. The service calls and safety information mailings, however, were insufficient to establish the necessary continuing relationship for the duty to retrofit. See *id.* Thus, the court held that the duty to retrofit did not apply. *Id.*

In this case, the only connections between Edison and Petitioner were occasional software updates sent to the vehicle to improve some safety and cosmetic features. R. at 3. Such updates allow Edison to regularly improve the safety of the vehicle’s Autodrive feature. *Id.* There is no evidence, however, that any of these updates were necessary for the safe operation of the vehicle. *Id.* These updates resemble computer software updates freely provided for a customer’s convenience, where the computer can still function properly without the updates. These updates were primarily a convenience, allowing consumers to enjoy vehicle updates without the need to purchase an entirely new vehicle. R. at 17. These updates did not require the vehicle to be brought into Edison’s or a service technician’s control. See *Gregory*, 538 N.W.2d at 336. A Marconi owner could choose never to use Autodrive, or rarely use it like Petitioner, and not need the Autodrive updates to safely operate the vehicle. R. at 4. Moreover, there was never any explicit agreement that Edison would provide any updates, much less provide all possible updates. See *id.* at 336 (finding manufacturer never “voluntarily assumed a duty” to retrofit).

Further, this is not a case where the manufacturer oversaw the basic safety and functioning of the product on a regular basis. *See Noel*, 342 F.2d at 241. The alleged defect in this case is not a faulty propeller system or helicopter blades, both of which are necessary to the survival of the vehicle operator. *See id.* at 235; *Bell Helicopter Co.*, 594 S.W.2d at 526. Rather, Petitioner claims that the limits of the Marconi's new, advanced sensor technology for its optional Autodrive feature, which the driver can override, are a defect necessitating retrofit. R. at 4. In these circumstances, Edison did not have a continuing relationship built around maintaining a mechanism of the vehicle necessary to proper, safe operation. *See Noel*, 342 F.2d at 241. As a result, the duty to retrofit does not apply to Edison.

2. *Most jurisdictions deny a duty to retrofit for new, improved technology.*

If this Court were to adopt a duty to retrofit for certain strict liability design defect cases, it should refuse to adopt a duty to retrofit products with new technology unavailable at the time the product was manufactured, and where no defect existed when the product reached the customer. There is no duty to retrofit a product with new, state-of-the art-technology when there was no defect at the time of manufacture. *Patton*, 861 P.2d at 1307; *see also Ostendorf*, 122 S.W.3d at 537 (holding no duty to retrofit where product was not defective when sold). Most jurisdictions refuse to recognize a duty to retrofit “a product not defective when sold.” *Ostendorf*, 122 S.W.3d at 533.

In *Lynch v. McStome & Lincoln Plaza Associates*, the Superior Court of Pennsylvania declined to adopt a broad duty to retrofit that required improving previously sold products with advancements in safety technology. 548 A.2d 1276, 1281 (Pa. Super. Ct. 1988). The appellant sued Montgomery Elevator Company (Montgomery) for an injury she received when an escalator manufactured by Montgomery came to a sudden halt. *Id.* at 1276. After the escalator was manufactured, but before the accident, Montgomery discovered and began using a new type of brake with a longer brake distance, making it safer. *Id.* at 1280. The appellant argued that Montgomery was subject to a duty to retrofit the product with the improved product design once the new technology was developed. *Id.* The court held otherwise,

declining to adopt a broad duty to retrofit that would require manufacturers to retrofit their products every time new technology was developed. *Id.* at 1281. Such a duty was not supported by precedent or “established principles of negligence liability.” *Id.* As a result, the duty to retrofit did not apply. *Id.*

Similarly, the Georgia Court of Appeals concluded in *Ford Motor Co. v. Reese* that there was no common law “duty to implement alternative safer designs” after the time of manufacture. 684 S.E.2d at 284. The appellee alleged that a design defect in one of Ford’s vehicles contributed to the death of the appellee’s mother. *Id.* at 282. The jury instruction included a duty to recall if the product “contain[ed] a danger ... the manufacturer [could] anticipate,” even if there was no defect. *Id.* at 282-83. The court explained that such a duty would make a manufacturer the “perpetual insurer of the safety of its products,” which would likely result in exorbitant costs for manufacturers and increased prices for customers. *Id.* at 285. Any duty to implement a safer alternative design “[was] limited to the time the product [was] manufactured.” *Id.* at 284. Therefore, there was no duty to retrofit for advancements in technology absent a defect at the time the product was manufactured. *See id.* at 283-84.

In this case, Petitioner alleges that the Marconi’s Autodrive sensors, which are less effective at detecting stationary objects when the vehicle is traveling faster than thirty-five miles per hour, are defective. R. at 5-6. While it was possible for Edison to add additional sensors to account for this limitation, it would have increased the cost of the vehicle by \$5,000, taking the Marconi out of the economy class of sedans and reducing its availability for many customers. R. at 5. Further, the driver’s ability to override the Autodrive feature meant that “even a moderately attentive driver” could avoid such stationary objects. R. at 5. Petitioner further argued that rather than recalling the vehicles to add the additional sensors, Edison could have sent out a new update, unavailable at the time the car was manufactured, that could potentially reduce the collision risk. R. at 7. This software update, however, was new technology unavailable at the time the vehicle was manufactured. *Id.* Separate from the potential additional sensors, this update would improve the existing sensor technology. *See id.* But lacking the update would not imply that the vehicle had been defective at the time it was manufactured,

because the update was not available when the Marconi was made. *See id.* This means that the update is not a defect repair; it is a technological upgrade, meaning most jurisdictions would not obligate the manufacturer to retrofit the product. *See Ostendorf*, 122 S.W.3d at 533. Also, no evidence suggests that any other vehicles possessed that update or even this particular Autodrive feature as a whole.

Following the majority rule, the duty to retrofit does not exist where a defect was not present at the time the product was manufactured. *See id.* The fact that the Marconi did not have the updated technology now available in a new update did not render the vehicle defective at the time it was manufactured, and there is no obligation to incorporate new technological changes to correct the limitations of past technology. *See Noel*, 342 F.2d at 236. The policy implications of such an approach would be disastrous for manufacturers and consumers alike. Businesses would refrain from developing new technologies that might improve safety when such inventions would require retrofitting all existing products in the market to avoid potential liability. *See Lynch*, 548 A.2d at 1281. While it is good policy to encourage businesses to improve the safety of their products and correct design defects prior to sale, it is dangerous and extraordinarily burdensome to obligate manufacturers to continually retrofit their products to keep them state-of-the-art. *See Patton*, 861 P.2d at 1307. Therefore, this Court should refuse to apply the duty to retrofit where there was no defect at the time of manufacture.

CONCLUSION

For the foregoing reasons, the Respondent respectfully requests this Honorable Court reverse the decision of the Court of Appeals.

Applicant Details

First Name **Mea**
 Middle Initial **M**
 Last Name **Donnelly**
 Citizenship Status **U. S. Citizen**
 Email mdonnelly1@email.arizona.edu
 Address
 Address

Address
Street
3463 E 4th Street
City
Tucson
State/Territory
Arizona
Zip
85716
Country
United States

Contact
 Phone Number **8475253516**

Applicant Education

BA/BS From **University of Illinois-Urbana-Champaign**
 Date of BA/BS **May 2019**
 JD/LLB From **University of Arizona James E. Rogers College of Law**
<http://www.law.arizona.edu/>
 Date of JD/LLB **May 20, 2022**
 Class Rank **50%**
 Law Review/Journal **Yes**
 Journal(s) **Arizona Journal of Environmental Law and Policy**
 Moot Court Experience **No**

Bar Admission

Prior Judicial Experience

Judicial
Internships/ Externships **No**
Post-graduate
Judicial Law Clerk **No**

Specialized Work Experience

Professional Organization

Organizations **Law Women's Association; Barry Davis National
Trial Team; Student Bar Association (Executive
Programming Coordinator); Legal Skills
Competition Faculty Committee**

Recommenders

Salmon, Susan
salmon@email.arizona.edu
520-621-8429

Griffin, Christopher
chrisgriffin@arizona.edu
(520) 626-8265

**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

Mea Donnelly

3463 E. 4th St., Tucson, AZ 85718 • 847-525-3516 • mdonnelly1@email.arizona.edu

May 26, 2021

The Honorable Elizabeth W. Hanes
Magistrate Judge
United States District Court for the Eastern District of Virginia
Spottswood W. Robinson III and Robert R. Merhige, Jr., Federal Courthouse
701 East Broad Street
Richmond, Virginia 23219

Dear Judge Hanes:

I am a rising third-year law student at the University of Arizona James E. Rogers College of Law where I serve as the Executive Editor of the *Arizona Journal of Environmental Law and Policy*. I am writing to apply for a 2022—2024 term clerkship in your chambers.

I believe my strengths in legal research and writing will make me an asset to your chambers. After my first year of law school, I had the opportunity to conduct research for two different law school professors in addition to taking graded summer coursework. Through my legal research opportunity with Professor Athanasios Mihalakas, I improved my ability to write concisely and learned to efficiently research complex statutory regimes. During my legal research opportunity with Professor Susie Salmon, I improved my ability to effectively research when I read and analyzed a variety of court orders issued in response to COVID, along with scientific documents about COVID as well.

The breadth of my legal writing experience has also helped me develop a professionalized approach to writing with clarity, conciseness, and accuracy. During my second year of law school, I was selected to serve as a Legal Writing and Research Fellow. This position involved helping first-year law students develop their legal writing skills and acting as the mediator for students' mock alternative dispute resolution conferences. Further, I was selected to serve as the Executive Editor of the *Arizona Journal of Environmental Law and Policy*, and I was one of three law students selected to join the *Journal of Appellate Practice and Process* for the 2021—2022 academic year. My journal experiences undoubtedly helped me hone the legal writing and research skills that will make me an effective judicial clerk and legal advocate.

My résumé, unofficial transcript, references, and writing sample are submitted with this application. Thank you very much for considering my application. Please feel free to contact me if I can provide you with any additional information.

Respectfully,

Mea Donnelly

Mea Donnelly

3463 E. 4th St., Tucson, AZ 85718 • 847-525-3516 • mdonnelly1@email.arizona.edu

Education

University of Arizona James E. Rogers College of Law, Tucson, AZ

Candidate for Juris Doctor, May 2022, GPA: 3.602/4.000, Top 33%

- Journals: *Arizona Journal of Environmental Law and Policy* (Executive Editor); *Journal of Appellate Practice and Policy* (Note Editor)
- Honors and Awards: Dean's Achievement Scholarship—Charles and Jean Ares named scholar (Full Tuition); Legal Writing and Research Fellow; Outstanding Oral Advocacy Award
- Activities: Barry Davis National Trial Team; Student Bar Association (Secretary); Business Law Association (Vice President); Legal Skills Competition Faculty Committee

University of Illinois, Urbana-Champaign, IL

Bachelor of Arts in Global Studies, May 2019

- Activities: Kappa Delta Sorority; Illinois Trial Team (High School Clinic Committee Member)

Experience

Bremer Whyte Brown & O'Meara LLP, San Diego, CA

Summer Law Clerk, June 2021-August 2021

The Innocence Project Clinic, University of Arizona James E. Rogers College of Law

Certified Limited Practice Student, August 2020-May 2021

Assisted with client communication and document preparation. Made record requests in both Maricopa County and Pima County. Aided Professor Buch in Rule 32 motion.

University of Arizona James E. Rogers College of Law, Remote

Research Assistant to Professor Athanasios Mihalakas, Summer 2020

Performed legal research on parameters of the European-Mediterranean free trade agreements in the scope of the Agadir agreement. Wrote portions of Professor Mihalakas's paper about the migrant crisis and the legal failures of the Barcelona Process.

University of Arizona James E. Rogers College of Law, Remote

Research Assistant to Professor Susan Salmon, Summer 2020

Performed legal research on the effects of the COVID-19 pandemic on the operation of courts in individual states. Discussed and analyzed research and legal conclusions with Professor Salmon.

Cook County Public Defender, Chicago, IL

Law Clerk, May 2018-August 2018

Assisted with client communication, document preparation and court communication. Discussed solutions and legal options for court cases with clients under supervision of attorneys.

Skills & Interests

Languages: Intermediate French

Interests: Travel (28 countries and 45 states), Piano, Abstract Painting, Playing with my Dog

June 13, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I write to recommend Mea Donnelly for a judicial clerkship. I am very familiar with Mea's abilities, both from her work as my student and from her work as my teaching assistant. Mea's strong performance on writing and citation tasks, her superlative teamwork and social skills, and most of all her initiative in learning the skills she needs to produce high quality legal work product will make her a strong judicial clerk.

I first met Mea when she was a student in my Legal Research, Analysis, and Communication course in the first semester of her first year. Mea impressed me with her careful, focused work in my class. Although I would characterize her first draft of the memo assignment as only slightly above average, she absorbed my written and in-person feedback, asked astute questions, listened carefully to the answers, and applied what she learned to her final work product. She took advantage of every opportunity to learn this foreign new language that we call "legal writing," including reading and rereading the text, participating actively in class exercises and discussions, attending office hours well prepared with questions, participating in other writing-support activities, and ultimately putting in the work to make sure her final draft was one of the best in the class.

I always tell my students that good lawyers are lifelong learners. Mea repeatedly demonstrated her commitment to that ethic. She took responsibility for her own learning and performance in my class. I have no doubt she would conquer the steep learning curve of a new judicial clerk with the same relentless determination.

Mea also distinguished herself by earning a spot on Arizona Law's trial team as a first-year student—which is incredibly unusual and a testament to her strong advocacy skills—and she managed to balance that commitment with her coursework. Although she might have earned higher grades in her first semester of law school had she not assumed that significant additional workload, I have no doubt that the learning experience was a valuable one. I had the pleasure of watching Mea deliver two oral arguments in virtual competitions this year, and she impressed me with her articulate delivery, quick thinking, and thorough preparation.

Mea also demonstrated strong social and teamwork skills. In my Legal Research, Analysis, and Communication course, we use a team-based learning pedagogy where the students are assigned to semester-long teams with at least four other students. Team members must work together to solve problems and reach consensus on answers or collaborative work product that will affect a portion—albeit a small one—of each team member's individual course grade. As you can imagine, this pedagogy can, at times, require the students to exercise considerable diplomacy, particularly where teammates disagree on an answer or when one teammate persuades another to vote for an answer that turns out to be incorrect. Mea invariably interacted constructively with her teammates, often advocating thoughtfully for her positions, but always treating her teammates with respect. In particular, I appreciated how Mea gently encouraged one particular team member over the course of the semester, making a point to draw this shy, more awkward student into team conversations and ensuring that he had a voice in team decisions.

Finally, based on Mea's strong work product and what I observed of her interactions with her teammates, I selected her as one of my three teaching assistants for this year. In that role, Mea facilitated in-class team activities in the first-year writing course, provided written and in-person feedback on writing assignments, prepared and delivered in-class presentations, and mentored two different cohorts of ten first-year students, one set the fall and a second in the spring. Mea again demonstrated excellent interpersonal skills and good judgment and always delivered high-quality work product on or before the deadline. The students in her cohorts uniformly praised both the content of her feedback and the supportive, collegial fashion in which she delivered it.

To give you an idea of my background and provide some context for this recommendation, I have taught legal writing at Arizona Law for over ten years. Before joining the College of Law full-time, I spent four years in the Tucson office of the law firm of Quarles & Brady, where I practiced in the areas of commercial litigation and products liability. Before joining Quarles & Brady, I practiced for five years as an associate and counsel with O'Melveny & Myers LLP in Los Angeles, California. In my experience, students and attorneys with Mea's unusually strong interpersonal and communication skills—as well as her commitment to constant growth and learning—tend to find success in law practice.

Mea will be a welcome addition to any chambers, and I recommend her wholeheartedly. Not only does she have strong writing,

Susan Salmon - salmon@email.arizona.edu - 520-621-8429

research, and interpersonal skills, she also is a delightful colleague. Please feel free to call me if you have any questions.

Sincerely,

Susan C. Salmon
Director of Legal Writing &
Clinical Professor of Law

Susan Salmon - salmon@email.arizona.edu - 520-621-8429



CHRISTOPHER L. GRIFFIN, JR.
Director of Empirical & Policy
Research and Research
Professor

James E Rogers College of Law
1201 E Speedway Blvd
PO Box 210176
Tucson AZ 85721-0176

Office: (520) 626-8265
Email: chrisgriffin@arizona.edu

law.arizona.edu

June 14, 2021

The Honorable Elizabeth W. Hanes
Spottswood W. Robinson III &
Robert R. Merhige, Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Re: Mea Donnelly

Dear Judge Hanes:

I write in support of Mea Donnelly's application for a clerkship position with you during the next available term. I joined the University of Arizona College of Law faculty in 2018 after serving as the Research Director at Harvard Law School's Access to Justice Lab and faculty positions at William and Mary and Duke Law Schools.

Mea was a student in my Fall 2019 Civil Procedure course, one over 90 students in her section. Among her classmates, Mea stood out for her maturity, intellect, and overall readiness for the practice of law. Her final grade (B+) reflects both how competitive the Civil Procedure section was and how well she performed. The highest grades on the mandatory grade distribution in my 1L courses tend to be functionally indistinguishable. In fact, based on her work in Civil Procedure, I considered Mea to be an A-range student. I also know she is on her way to becoming a first-rate trial attorney. The College of Law clearly saw the same promise when it awarded her a full-tuition Dean's Achievement Scholarship. **In light of her excellent record after two years, I enthusiastically recommend Mea to you.**

I am most impressed by Mea's improvement from her first semester in law school through last term. She certainly performed well enough in her Fall 1L courses to earn a place on the Dean's List. But Mea seems to have come into her own as a 2L. In the midst of pandemic-related challenges that all our students faced—learning via Zoom, feeling disconnected from peers, and applying for summer positions—Mea navigated her coursework masterfully. This noticeable jump convinces me that Mea needed more time to acclimate to her J.D. studies and for test-taking skills to catch up to her natural talents. She has proven herself as a nascent advocate, complete with the written and oral communication skills that a judge would value in their clerks. I am genuinely excited about what Mea will be able to contribute to your chambers.

My esteem for Mea is based as much on her classroom prowess as it is on her accomplishments outside the formal academic setting. She embodies the type of person any

[Redacted signature]

Page 2 of 2
Mea Donnelly Letter of Recommendation - Judge Hanes

educational institution would hope to welcome as a student: involved in her campus community, intellectually curious, and open to new experiences. Mea has devoted herself to Arizona Law through continued service on the Student Bar Association, membership in the Law Women's Association, and noteworthy participation on the National Trial Team. Few students jump into campus life so broadly; by doing so, Mea exemplifies the unflagging motivation of our best students. In addition, her proficiency with both civil and criminal procedure—whether in my course or through her work at the Cook County Public Defender's Office—suggest that she has already gained a significant understanding of trial work. Finally, I admire her willingness to travel the country (and the world) in service of her professional goals. Mea's ability to manage all of her commitments while maintaining high academic standards suggests that she will succeed in the demanding environment of a judicial clerkship. She stands out, in particular, for doing so in what looks like—but I know is not—an effortless manner.

Mea Donnelly will be a fantastic addition to any judge's chambers, and I trust that you will see the same all-around aptitude in her application and in person. Should you have any questions about this recommendation, please do not hesitate to be in touch.

Sincerely,



Christopher L. Griffin, Jr.

[Redacted]

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Carol Laughlin,
Plaintiff,
vs.
National Testing Corporation,
Defendant.

Case No.: CV 19—29136
MOTION TO COMPEL:
SUPPLEMENTAL BRIEF
FOR THE MOTION TO
COMPEL DISCOVERY

Plaintiff Carol Laughlin asks that this Court grants the motion to compel discovery because a corporate ombudsman relationship does not qualify as a privileged relationship under Rule 501 of the Federal Rules of Evidence. Carol Laughlin sued her former employer, NTC, because her former supervisor sexually harassed her; and, NTC fired Laughlin in retaliation to the complaint she made to NTC’s ombudsman. NTC is now trying to hide the supervisor’s workplace conduct behind an empty claim that a corporate ombudsman privilege exists. Federal courts typically apply a four-part test to determine if the moving party meets the significant burden to create a new privilege. With the evidence presented, NTC does not overcome the significant burden the four-part test establishes. Therefore, this Court should grant the motion to compel discovery.

Statement of Facts

Carol Laughlin worked for the National Testing Company (NTC) for five years. Compl. ¶ 6. In 2017, Laughlin reported that her supervisor was sexually harassing her to NTC’s ombudsman, Sami Saifan. *Id.* ¶¶ 10-11. In November of 2018, NTC fired Laughlin. *Id.* ¶ 14. During discovery in her sexual discrimination lawsuit, NTC withheld all complaints made about the supervisor to Saifan. *Id.* Laughlin now moves to compel the discovery of these communications. *Id.*

When NTC hired Laughlin in June of 2013, the routine procedure was to have new employees sign an acknowledgment that they had received NTC’s personnel manual. Saifan Aff.

¶ 3. However, it is not clear that Laughlin ever signed the document because NTC has not been able to find Laughlin's signed personnel manual. *Id.*

NTC's personnel manual explains the role of the office ombudsman. *Id.* The ombudsman's mission is to be an effective, confidential resource and liaison for NTC and to facilitate complaints in a fair, impartial manner. *Id.* 4. The manual goes on to tell the employee that confidentiality with the ombudsman is not to be expected in the judicial process. *Id.* 4-5.

NTC claims that confidentiality for their ombudsman creates "an increased level of protection against retaliation." Saifan Aff. ¶ 5. However, NTC's CEO admits that he knew an ombudsman was effective at reducing the number of lawsuits against a company when he created the office. Jamison Aff. ¶ 3. Since the inception of NTC's ombudsman, the number of formal lawsuits as a percent of the number of employees against NTC has diminished from .0066 percent to .0010 percent. Ex. 2.

For Laughlin's first four years of employment, she received satisfactory to above satisfactory performance reviews. Compl. ¶ 8. However, in June of 2017, Ravi Ram became Laughlin's new supervisor and began harassing her. *Id.* ¶ 9. In July of 2017, Laughlin went to the office of NTC's ombudsman, Sami Saifan, to report the sexual harassment she was suffering at the hands of Ram. *Id.* ¶10-11. Laughlin shared how Ram told her "women should not be working with drones," "she was too hot to be an engineer," and Ram asked her how she kept her "legs in such great shape." *Id.* ¶ 10. Laughlin also shared how Ram would demean her in front of male coworkers. *Id.* Saifan responded by saying he "was not surprised" while patting files near his desk. *Id.* ¶ 11. Saifan then suggested a meeting to see if Laughlin and Ram could resolve their differences. *Id.*

In August of 2017, Laughlin and Ram had their meeting with Saifan. *Id.* ¶ 12. Saifan required Laughlin to sign a form. *Id.* The “Confidentiality Agreement” swore Laughlin to secrecy about the proceedings. Ex. 3. This pact also included a line that secrecy could be breached if “required by law.” *Id.* Laughlin signed the agreement. *Id.* NTC denies that Ram apologized about the harassment. Answer ¶ 9. Ram was not reprimanded for his conduct. Compl. ¶ 12.

After the meeting, Ram continued to harass Laughlin and told her “she inspected drones like a girl,” and she was “as hot as nuclear fusion.” *Id.* ¶13. When Laughlin told Ram to stop, he told her, “she needed to get along with guys.” *Id.*

After the meeting, Laughlin received her first unsatisfactory review and was put on probation. *Id.* ¶ 14. She was then informed she was to report to Ram’s subordinate instead. *Id.* In November of 2018, Laughlin was terminated. *Id.* Laughlin then sued NTC for sexual discrimination and retaliation. *Id.* ¶ 16-20. During discovery, NTC withheld complaints about Ram to the corporate ombudsman stating that those communications were privileged. Order Re: Suppl. Br. 2. Laughlin has since moved to compel discovery, and this court has ordered supplemental briefing on the ombudsman privilege matter. *Id.*

Argument

I. This Court should grant the motion to compel discovery because there is not enough evidence to overcome the significant burden to create an ombudsman privilege.

Rule 501 provides that common law, “as interpreted by United States courts in the light of reason and experience, governs a claim of privilege.” Fed. R. Evid. 501. The Court has held that it is everyman’s duty to give the evidence they are capable of giving. *Jaffee v. Redmond*, 518 U.S. 1, 9 (1996). Courts should interpret new privileges on a case-by-case basis. *Trammel v. United States*, 445 U.S. 40, 47 (1980). Although Rule 501 gives courts the authority to develop new rules of privilege, the court does not like “to exercise this authority expansively” because creating new

evidentiary privileges directly contradicts the fundamental need for public access to evidence. *Univ. of Pa. v. E.E.O.C.*, 493 U.S. 182, 189 (1990); *Trammel*, 445 U.S. at 50.

In order to create a new privilege, the moving party must overcome a significant burden. *Carman v. McDonnell Douglas Corp.*, 114 F.3d 790, 793 (8th Cir. 1997). The only way to overcome this burden is to judge the new privilege with four factors: 1) confidentiality and trust are necessary to the relationship 2) there is a transcendent, public benefit from the creation of the privilege 3) there is only a modest evidentiary loss from the privilege 4) there is an abundance of state law and common law that demands the federal judiciary recognize this privilege. *See Jaffee*, 518 U.S. at 9-13. The courts only create new rules of privilege if excluding relevant evidence has a public good that overrides the “predominant principle of utilizing all rational means for ascertaining truth.” *Id.* (quoting *Elkins v. United States*, 364 U.S. 206, 234 (1960) (Frankfurter, J., dissenting)). None of the preceding four factors have great enough benefits to be found in the defendant’s favor. *See also Jaffee*, 518 U.S. at 9-13.

A. The relationship between Laughlin and NTC’s Ombudsman does not require confidentiality to function effectively because an ombudsman can offer privacy from management and an employee does not need confidentiality to confide in a corporate ombudsman.

The courts only create privileges to protect relationships that are rooted in confidentiality and trust. *See Jaffee*, 518 U.S. at 10. A relationship can have a confidential aspect to it without confidentiality and trust being essential for the relationship to function. *See Carman*, 114 F.3d at 794. In *Carman*, the court considered whether to create an ombudsman privilege in a case where an employee sued his former employer for age discrimination. *Id.* at 791. The court held that a corporate ombudsman’s relationship with employees is not rooted in confidentiality because an ombudsman can still effectively reconcile relationships and convince an employee that the ombudsman can keep information from management without a privilege. *Id.* at 794. The court

reasoned that an employee with a valid complaint would generally feel they have nothing to hide, and possible litigation discovery will not deter the employee from sharing information with a corporate ombudsman. *Id.*

A relationship is not rooted in confidentiality if one party does not expect complete confidentiality. *See Gazzano v. Stanford Univ.*, No. C 12—05742 PSG, 2013 WL 3158075, at *3 (N.D. Cal. June 20, 2013). In *Gazzano*, the court considered whether to create an ombudsman privilege in a case about whistleblowing retaliation. *Id.* The court held that employees are unlikely to expect complete confidentiality in conversations with an ombudsman because ombudsmen are normally company representatives, therefore, the court cannot give corporate ombudsmen the same privileges as neutral mediators. *Id.*

Here, the relationship between a corporate ombudsman and an employee does not require confidentiality to function because NTC's ombudsman can offer a functioning level of confidentiality without an evidentiary privilege and employees never expected complete confidentiality. NTC's ombudsman maintains a level of confidentiality, without confidentiality being essential to do his job effectively. In NTC's personnel manual, NTC notifies employees that although the ombudsman tries to maintain confidentiality, communication with the corporate ombudsman is not privileged from a court of law. However, Laughlin initially went to NTC's ombudsman despite no evidence that she had ever received or signed the personnel manual. She did not need the extra assurance of confidentiality to use the ombudsman's services. Like the court reasoned how an employee would think in *Carman*, Laughlin also felt she had nothing to hide and went to NTC's ombudsman regardless of confidentiality.

Further, Laughlin never expected full confidentiality from NTC's ombudsman. Like the plaintiff knew in *Gazzano*, Laughlin knew Saifan was a paid employee for NTC; yet, she trusted him to mediate the harassment situation with Ram despite NTC paying Saifan to do his job.

The relationship between Laughlin and Saifan is not rooted in confidentiality. Laughlin went to Saifan despite any evidence that she knew that the office of the ombudsman valued confidentiality and Laughlin never expected complete confidentiality from Saifan. Corporate ombudsmen can still offer discretion from management and fulfill their purpose without a privilege in place.

B. The public benefit gained from a corporate ombudsman privilege does not transcend the judicial necessity of ascertaining truth because there is not enough evidence to substantiate NTC's claim that ombudsmen decrease lawsuits.

To justify a new privilege, the benefit gained from the privilege created must surpass the public need for every man's truth. *See Jaffee*, 518 U.S. at 11 (holding that psychotherapists serve a great enough public benefit for an evidentiary privilege by facilitating mental health treatment for individuals when the Court considered whether to create a privilege in a case where the police-officer-defendant received counseling after shooting a man); *see also Trammel*, 445 U.S. at 53 (modifying the spousal privilege in order to further the public interest of matrimony harmony when the Court considered whether to create a federal spousal privilege in a case where the defendant was accused of importing heroin); *Oleszko v. State Comp. Ins. Fund*, 243 F.3d 1154, 1157 (9th Cir. 2001) (distinguishing employee assistance programs (EAPs) from ombudsmen by stating EAPs assist in resolving employees' mental health problems while ombudsmen resolving workplace disputes prior to litigation was not a sufficiently important interest).

A decrease in lawsuits is not a great enough public benefit without significant evidence to support the claim. *See Carman*, 114 F.3d at 793. In *Carman*, the court held that while alternative

dispute resolutions were a welcome addition to society, the defendant must have presented and explained the significance of their data to rationalize the creation of a new privilege. *Id.* The court reasoned the defendant should have shown and explained evidence that an ombudsman was more successful at solving workplace disputes than other forms of dispute resolution. *Id.*

Here, there is not a great enough public benefit to create an evidentiary privilege because corporate ombudsmen do not provide a transcendent public benefit, nor does NTC connect their “summary of data” spreadsheet to their claim that ombudsmen lead to a decrease in lawsuits. Ombudsmen do not provide a benefit that surpasses the public need for truth. There is no evidence in the record that corporate ombudsmen provide mental health benefits to employees. NTC’s personnel manual states that the purpose of the ombudsmen is to promote workplace harmony; however, there is no data to prove this claim.

NTC did not provide significant evidence to create a privilege because the only data NTC has provided to substantiate their claim that their ombudsman leads to a decrease in lawsuits is Exhibit 2. Exhibit 2 only lays out data about visits to the ombudsman, the number of formal proceedings, and the number of formal proceedings as a percent of employees per year. Nowhere in the evidentiary record does NTC explain the significance of this data or show that their ombudsman is the reason for the decrease in lawsuits. NTC simply throws data at the Court and expects the Court to validate their claims somehow.

There is no transcendent public benefit from a corporate ombudsman privilege. Corporate ombudsmen do not provide employees’ mental health benefits, nor is there evidence in the record that they promote workplace harmony. Further, NTC does not explain how their data demonstrates that ombudsmen lead to a decrease in lawsuits. Because of this, there is not a great enough benefit for this Court to find in NTC’s favor.

C. There is a substantial evidentiary loss from the creation of a corporate ombudsman privilege because sexual harassment victims will face a heavy burden trying to find relief.

The public gain from a privilege must substantially outweigh the evidence lost. *See Jaffee*, 518 U.S. at 11-12. In *Jaffee*, the Court considered whether a psychotherapist and patient relationship would change in the absence of an evidentiary privilege, resulting in less effective treatment. *Id.* The Court held that a privilege was necessary to preserve truth in psychotherapist and patient conversations because the public need for effective mental health treatment in society greatly outweighed the modest evidentiary benefit. *Id.* The Court reasoned that conversations with psychotherapists would be “chilled” without an evidentiary privilege, preventing any adverse evidence from ever materializing. *Id.*

Courts must look to see if a new privilege will affect relationships. *See Shabazz v. Scurr*, 662 F. Supp. 90, 92 (S.D. Iowa 1987) (reasoning that “anything which chills a citizen’s willingness to come forward” limits the effectiveness of a prison ombudsman in a case where the court considered to extend a privilege to a prison ombudsman with significant investigatory powers).

The creation of an ombudsman privilege would allow perpetrators of sexual discrimination in the workplace to exclude evidence that would help a victim find relief. *See Univ. of Pa.*, 493 U.S. at 193. In *University of Pennsylvania*, the Court considered whether to create a privilege in a case where the Equal Employment Opportunity Commission sought to investigate a faculty member who allegedly was discriminated against on the basis of race and sex. *Id.* at 182. The Court held the creation of a peer-review privilege would create a significant litigation burden for the Commission’s effort to remedy discrimination. *Id.* at 194. The Court reasoned employers could use the privilege as a “potent weapon... [for those] who have no interest in complying voluntarily.” *Id.* (quoting *EEOC v. Shell Oil Co.*, 466 U.S. 54, 81 (1984)).

Here, the creation of an ombudsman privilege would give NTC a potent weapon because victims of sexual harassment in the workplace would face a significant burden that does not justify the evidence lost. Unlike the “chilled” effect on conversations between a psychotherapist and a patient, the conversations between a corporate ombudsman and an employee would remain relatively unchanged. Employees go to NTC’s ombudsman to remedy workplace disputes and will not hide information in fear of it being used against them in litigation. NTC is the only party with anything to gain from a corporate ombudsman privilege, and there is no public need that greatly outweighs the evidentiary benefit.

A corporate ombudsman privilege makes the relief process much harder for victims. Like the possible evidentiary burden created on discrimination victims in *University of Pennsylvania*, a corporate ombudsman privilege would create a significant burden for victims of sexual discrimination trying to find relief. NTC would be given a “potent weapon” against former employees that were harassed in the workplace.

The evidentiary loss from a corporate ombudsman privilege is far too great for one to justify the creation of the privilege. Conversations with ombudsmen will not be altered so greatly that there would be no evidence without a privilege. A possible evidentiary privilege only puts a significant burden on the victims of sexual harassment in the workplace. Creating a privilege only benefits NTC.

D. There is no ombudsmen common law privilege for corporate ombudsmen because no state statute establishes such a privilege.

Courts must look to see if there is a great enough existing body of law to justify an evidentiary privilege. *See Jaffee*, 518 U.S. at 13-14. Consistency amongst the states indicates “reason and experience” to support acknowledgment of a privilege. *Id.*

Only four states have explicitly recognized an ombudsman privilege. Scott C. Van Soye, *Illusory Ethics: Legal Barriers to an Ombudsman's Compliance with Accepted Ethical Standards*, 8 Pepp. Disp. Resol. L.J. 117, 129 (2007). Arizona does not have a corporate ombudsman privilege, only an “ombudsman-citizen aide” privilege. A.R.S. § 41-1380. An “ombudsman-citizen aid” is a public officer. A.R.S. § 41-1375.

Here, it would be improper to adopt a corporate ombudsman privilege because many states have not recognized such a privilege. There is consistency against the creation of a corporate ombudsman privilege. While Arizona has created an ombudsman privilege for their “ombudsman-citizen aids,” the state has not created a privilege for corporate ombudsmen. Corporate ombudsmen are private actors, while “ombudsman-citizen aids” are public officers. If this Court were to create a corporate ombudsman privilege, it would completely disregard the states’ consensus because there is no existing body of law to justify a corporate ombudsman privilege.

Conclusion

This Court should grant the Plaintiff’s motion to compel discovery because NTC has failed to provide evidence that the office of the ombudsman meets the qualifications set forth by the Supreme Court in *Jaffee*. A corporate ombudsman and employee relationship does not need confidentiality to function effectively. NTC tried to give this Court a summary of data to substantiate their claim that their ombudsman leads to a decrease in lawsuits. However, NTC never explains how these random data points correlate to a transcendent public benefit. Creating a privilege for NTC gives the company a “potent weapon” against the justice system. The justice that Carol Laughlin demands requires that this Court looks at the facts and the law in front of them. Do not allow NTC to sway this Court away from the transcendent public interest in ending sexual discrimination in the workplace by creating an unsubstantiated privilege.

Applicant Details

First Name **Kyle**
 Middle Initial **E**
 Last Name **Durch**
 Citizenship Status **U. S. Citizen**
 Email Address kyle.durch@richmond.edu

Address

Address
Street
700 Schooner Blvd
City
Williamsburg
State/Territory
Virginia
Zip
23185
Country
United States

Contact Phone Number **(253) 951-2033**

Applicant Education

BA/BS From **University of Washington**
 Date of BA/BS **June 2007**
 JD/LLB From **University of Richmond School of Law**
http://www.nalplawsonline.org/content/OrganizationalSnapshots/OrgSnapshot_235.pdf
 Date of JD/LLB **May 7, 2022**
 Class Rank **50%**
 Law Review/Journal **Yes**
 Journal(s) **Richmond Journal of Law & Technology**
 Moot Court Experience **Yes**
 Moot Court Name(s) **Moot Court Board**
Trial Advocacy Board

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	Yes
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

References

Jessica Erickson, (804) 289-8322, jerickso@richmond.edu; Carl Tobias, (804) 287-6440, ctobias@richmond.edu; Peggy Sanner, (804) 780-1392, psanner@cbf.org

This applicant has certified that all data entered in this profile and any application documents are true and correct.

700 Schooner Blvd.
Williamsburg, Virginia 23185

May 3, 2022

The Honorable Elizabeth W. Hanes
Spottswood W. Robinson III & Robert R. Merhige, Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, Virginia 23219

Dear Judge Hanes:

I am a graduating third-year law student at the University of Richmond School of Law and I am interested in the clerkship in your chambers for the 2022–2023 term. Although I studied in Richmond, my family and I live in Williamsburg and we intend to remain in the Hampton Roads area, where I look forward to practicing. I plan to sit for the Virginia bar in July.

I gained significant experience researching and writing in a variety of settings during law school. Most notably, I interned for the Honorable Henry Hudson in the Eastern District of Virginia after my 1L year. In that position, I observed numerous hearings on both civil and criminal matters, and I advised the judge on various issues. I drafted numerous briefs analyzing the arguments in pending cases, which the judge used to inform his approach in initial meetings with the parties. Finally, I drafted an opinion for a Social Security appeal and edited several pending opinions. In addition to my internship experiences, I also was selected as the winner of a writing competition and had an article published in the *Richmond Journal of Law and Technology*. Beyond the publication, I served as an editor on this journal as well.

Prior to law school, I served for several years in the Air Force. I was drawn to the law to apply my skills and experience in a way that would more directly benefit and protect the community, though I gained many important skills that will help me as a law clerk and in practice. Specifically, I learned the importance of leadership and teamwork. While I had many varied experiences, most recently I led a team of four to operate an aircraft valued over 14 million dollars in intelligence, surveillance, and reconnaissance missions. In another role, I served as a Sexual Assault Response Coordinator, and led a team of over forty volunteers to assist clients recovering from sexual assault. I am certain the interpersonal skills I gained in the military will serve me well in a clerkship.

Enclosed are my resume, law school transcript, and writing sample. Also included with my application is a list of references. I would welcome the opportunity to meet with you and further discuss the position and my qualifications. Thank you for your consideration, and I look forward to hearing from you.

Respectfully,

Kyle Durch

Kyle E. Durch

700 Schooner Blvd. • Williamsburg, VA 23185 • (253) 951-2033 • kyle.durch@richmond.edu

EDUCATION

University of Richmond School of Law, Richmond, VA

Candidate for Juris Doctor, May 2022

GPA: 3.45/4.00 (Top 50%), *cum laude*

Honors: Copy Editor, *Richmond Journal of Law & Technology*
 Winner, Rick Klau Prize, 2022 Student Law & Technology Writing Competition
 Member, The Order of Barristers
 Board Member, Moot Court Board; Board Member, Trial Advocacy Board

Publications: Electric Airplanes: Bridging the Technological and Regulatory Gap, 27 RICH. J.L. & TECH., no. 3, 2020.

Activities: President, Environmental Law Society; Member, Criminal Law and Veterans Law Societies

University of Washington, Seattle, WA

Bachelor of Science in Atmospheric Science, Minor in Russian Language, June 2007

Green River Community College, Auburn, WA

Associate in Arts, high honors, June 2003

EXPERIENCE

Commonwealth's Attorney's Office, Henrico, VA

Legal Intern, August 2021 – November 2021. Interviewed and advised victims and witnesses regarding their cases. Prosecuted cases in general district court. Researched and developed arguments for motions and voir dire. Wrote memorandums advising prosecutors on issues in cases and possible charges. Authored brief for circuit court.

Department of Justice, Washington, DC

Financial Services, Fintech, and Banking Antitrust Division Legal Student Trainee, May 2021 – August 2021. Wrote memorandums analyzing case law on product market definitions and competitive effect in antitrust litigation. Conducted document review and assisted with depositions. Spearheaded project on attorney-client privilege.

Chesapeake Bay Foundation, Richmond, VA

Legal Intern, January 2021 – April 2021. Prepared policy positions, analyzed legislation, monitored bills and permit activities, and observed legislative meetings. Assisted in preparing administrative petitions, validated permits, and advised staff on compliance issues. Collaborated on projects with a cross-functional team, including scientists, lobbyists, and public relations staff.

United States District Court, Eastern District of Virginia, Richmond, VA

Judicial Intern to The Honorable Henry E. Hudson, July 2020 – August 2020. Wrote and edited briefs and opinions. Analyzed multiple contract disputes, personal injury cases, and Social Security appeals. Observed and assisted with in-person and remote hearings conducted during pandemic conditions.

Virginia Conservation Network (VCN), Richmond, VA

Fleet Electrification Intern, May 2020 – July 2020. Researched legal barriers to municipal fleet electrification; produced summary report to guide policy development. Examined federal and state law on building standards, vehicle charging infrastructure, health and nuisance law.

United States Air Force, Various Locations

November 2008 – April 2019. Served as aircraft commander in both manned and remotely-piloted aircraft. Led various offices ranging from Awards and Decorations (wrote and edited award nominations), to Mobility (managed readiness requirements and processed deployment orders for over one hundred personnel). Selected to join Flight Safety community; conducted aircraft mishap investigations, trained aircrew in safety principles, and coordinated safety programs for numerous bases worldwide. Volunteered to serve as Sexual Assault Response Coordinator; led over forty victim advocates to care for numerous sexual assault survivors.

UNIVERSITY OF RICHMOND

Student No: ***-**-6261

UR ID: 36885689

Date Issued: 08-FEB-2022

AEFE

Record of: Kyle E Durch

Page: 1

Issued To: Kyle Durch

Parchment DocumentID: TWPOC15J

Course Level: Law

First Admit: Fall 2018

Last Admit: Fall 2019

Current Curriculum

Juris Doctor

College : School of Law

Major : Law

SUBJ NO.

COURSE TITLE

CRED GRD

PTS R

Institution Information continued:

Ehrs: 16.00 GPA-Hrs: 9.00 QPts: 32.80 GPA: 3.64

SUBJ NO. COURSE TITLE CRED GRD PTS R

Spring 2021

LAW 620 ENVIRONMENTAL LAW 3.00 B+ 9.90

LAW 660 REGULATORY LAW PRACTICUM 3.00 A- 11.10

LAW 699 ARMED CONFLICT, NAT'L SECURITY 2.00 B+ 6.60 I

LAW 750 EXTERNSHIP: CIVIL 6.00 P 0.00

LAW 599 APPELLATE ADVOCACY 2.00 A- 7.40

Ehrs: 16.00 GPA-Hrs: 10.00 QPts: 35.00 GPA: 3.50

INSTITUTION CREDIT:

Fall 2019

LAW 513 CONTRACTS 4.00 B+ 13.20

LAW 514 TORTS 4.00 B+ 13.20

LAW 515 CIVIL PROCEDURE 4.00 B+ 13.20

LAW 517 LEGAL ANALYSIS & WRITING I 2.00 A- 7.40

LAW 520 LEGAL RESEARCH I 0.00 S 0.00

Ehrs: 14.00 GPA-Hrs: 14.00 QPts: 47.00 GPA: 3.35

Fall 2021 8 3 0

LAW 602 BUSINESS ASSOCIATIONS 4.00 B+ 13.20

LAW 645 LAND USE PLANNING 3.00 P 0.00

LAW 699 STARTING A SMALL/SOLO PRACTICE 1.00 P 0.00 I

LAW 751 EXTERNSHIP: CRIMINAL 6.00 P 0.00

Ehrs: 14.00 GPA-Hrs: 4.00 QPts: 13.20 GPA: 3.30

Spring 2020

COVID-19 Pandemic

All courses graded Credit/No credit.

LAW 503 CONSTITUTIONAL LAW 4.00 CR 0.00

LAW 506 CRIMINAL LAW 3.00 CR 0.00

LAW 516 PROPERTY 4.00 CR 0.00

LAW 518 LEGAL ANALYSIS & WRITING II 2.00 CR 0.00

LAW 519 LEGISLATION AND REGULATION 3.00 CR 0.00

LAW 521 LEGAL RESEARCH II 1.00 CR 0.00

Ehrs: 17.00 GPA-Hrs: 0.00 QPts: 0.00 GPA: 0.00

Spring 2022

IN PROGRESS WORK

LAW 605 CRIMINAL LAW & PSYCHIATRY 2.00 IN PROGRESS

LAW 625 CRIMINAL PROCEDURE: ADJUDICATN 3.00 IN PROGRESS

LAW 653 INTRODUCTION TO BUSINESS 2.00 IN PROGRESS

LAW 671 INTERVIEW/NEGOTIATE/COUNSELING 4.00 IN PROGRESS

LAW 699 LEGAL BUSINESS DESIGN PRACTICM 2.00 IN PROGRESS

LAW 699 ST: PP MOOT COURT COMPETITION 1.00 IN PROGRESS

LAW 793 TRIAL COMPETITION 1.00 IN PROGRESS

In Progress Credits 15.00

Fall 2020

LAW 599 EVIDENCE 4.00 A- 14.80

LAW 607 ADMINISTRATIVE LAW 3.00 P 0.00

LAW 666 ENERGY LAW 3.00 A 12.00

LAW 796 INDEPENDENT STUDY 2.00 P 0.00

LAW 598 TRIAL ADVOCACY 2.00 P 0.00

LAW 605 PROFESSIONAL RESPONSIBILITY 2.00 B 6.00

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***** CONTINUED ON PAGE 2 *****

K a Ball

Kristen A. Ball, University Registrar

UNIVERSITY OF RICHMOND

Student No: *****6261 UR ID: 36885689 Date Issued: 08-FEB-2022 AEEE

Record of: Kyle E Durch Page: 2
Level: Law

***** TRANSCRIPT TOTALS *****				
	Earned Hrs	GPA Hrs	Points	GPA
TOTAL INSTITUTION	77.00	37.00	128.00	3.45
TOTAL TRANSFER	0.00	0.00	0.00	0.00
OVERALL	77.00	37.00	128.00	3.45
***** END OF TRANSCRIPT *****				



K a Ball

Kristen A. Ball, University Registrar

KYLE E. DURCH

700 Schooner Blvd
Williamsburg, VA 23185
kyle.durch@richmond.edu
(253) 951-2033

WRITING SAMPLE

I wrote the following brief for Judge Decker's Appellate Advocacy class during Spring 2021. Arguing on behalf of the Commonwealth at the Virginia Court of Appeals, I sought to affirm the lower court's findings in a Fourth Amendment seizure case. This excerpt focuses on the substance of the brief, without the title page, tables of contents and authorities, and certification pages.

STATEMENT OF THE CASE

In the Circuit Court for the County of Arlington, Appellant was indicted for: (1) possession of marijuana; and (2) refusal to identify to a police officer. He moved to suppress evidence, which was denied at a hearing on June 11, 2020. On the same day, Appellant waived a jury trial and stipulated to facts from the motions hearing, and he was found guilty on both counts. After a brief sentencing hearing, the court sentenced Appellant to: twenty days imprisonment and a fine of \$500 for possession of marijuana; and ten days imprisonment for failure to identify, to run consecutively. In total, the sentence consisted of thirty days imprisonment and \$500 fine. App. 2, 58, 63–67.

Appellant filed a timely Notice of Appeal. App. 68–69.

ASSIGNMENTS OF ERROR

In response to Appellant’s concerns,

- I. The Circuit Court did not err when it found that Officer Hu had reasonable suspicion when she seized Appellant, and therefore there was no Fourth Amendment violation.
- II. The Circuit Court did not err in finding that Appellant was not compelled to incriminate himself when Officer Hu asked for his identification.

STATEMENT OF THE FACTS

On April 11, 2020, Special Agent Carlos Huerta, assigned to the Drug Enforcement Administration (“DEA”) field office in Miami, received an anonymous hotline tip regarding a ten-ounce Colombian heroin shipment from Miami to Washington, D.C. The description of the courier was a “young guy, white, mid 20s, about five-ten, with shoulder length dark hair.” App. at 36. Observing passengers at the airport ticket counter, Agent Huerta identified a man meeting the description, but with hair in a ponytail, and confirmed his name with the counter agent as “Edward Partinski,” traveling on a cash-paid one-way ticket to Washington, D.C., and checking a bag with a mismatched name and false address. Although he observed Appellant as well and considered him, Agent Huerta ruled out Appellant and determined that “Partinski” was the match to the hotline description. App. at 34–37.

Identifying this individual as the suspect, Agent Huerta relayed the description and his contact information to DEA Washington, intending to hand off the follow to a fellow officer there to identify the distribution organization. The message went through a DEA dispatcher to United States Park Police Officer Cynthia Hu, operating at National Airport in plain clothes as part of a state-federal drug interdiction task force. As relayed, the message described “a white male, early to mid twenties, about five feet, ten inches, medium build, dark hair pulled back in a pony tail, wearing brown slacks and a white polo shirt, carrying a blue nylon shoulder bag,” traveling on U.S. Air flight 112 and ticketed as “Edward Partinski.” App. at 15–16. Officer Hu staked out the arrival gate while attempting to call Agent Huerta multiple times, but to no avail. She was left with only the description from the relayed message and confirmation with the gate agent that “Partinski” was on board. App. at 12–14, 16, 19, 38.

After the plane arrived, Officer Hu observed Appellant, who wore brown pants, blue windbreaker, white shirt collar, and carried an apparently navy blue—though actually black—nylon shoulder bag. Though she did not observe it, Appellant, who is six feet three inches tall, wore a green shirt with a white collar, which was obscured by the unzipped jacket. Believing Appellant to be a match of the relayed description, Officer Hu followed him. She observed Appellant stare at her for a few seconds, stop and turn around while walking through the hallway, and stare at her over his shoulder. He walked so quickly to the terminal exit that she nearly had to jog to keep up. App. at 17–18, 29, 45–46, 50.

As Appellant purchased a ticket from the METRO ticket vending machine outside, Officer Hu asked to speak with Appellant. When he shook his head and walked toward the train platform, she approached again with her badge, identified herself as a police officer, and demanded to speak with him. Appellant asked her why, but receiving no response followed her request to move aside toward the wall. Officer Hu observed Appellant profusely sweating and noticed that he would not maintain eye contact. She then asked for his identification, to which he asked whether she was arresting him, and she responded “not yet.” Appellant indicated that if he wasn’t under arrest, then he was going to leave. However, Officer Hu told him that she “wasn’t letting him go anywhere until he told [her] his name and showed [her] some

I.D.” App. at 22. Appellant responded by slamming his fist against the wall and yelling obscenities about police. App. at 19–22, 49–50.

At that moment, Special Agent Robert Lewis arrived to assist. Officer Hu gave Appellant an additional opportunity to produce identification, but he refused. She then placed Appellant under arrest, and Agent Lewis searched and handcuffed Appellant. In addition to a wallet with valid identification containing Appellant’s name and address, Officer Hu discovered a plastic bag of marijuana in the back of a pack of cigarettes from Appellant’s jacket pocket. App. at 22–23, 31, 46.

STANDARD OF REVIEW

Determination of the existence of reasonable suspicion “involve[s] questions of both law and fact” and is reviewed de novo on appeal. *McGee v. Commonwealth*, 487 S.E.2d 259, 261 (Va. Ct. App. 1997). Trial court factual findings are reviewed for clear error, but the application of a denial of a motion to suppress evidence is reviewed de novo on appeal. *Thomas v. Commonwealth*, 850 S.E.2d 400, 406 (Va. Ct. App. 2020). The appellate court views “the evidence in the light most favorable to the Commonwealth, granting to it all reasonable inferences deducible therefrom.” *Id.* Voluntariness of a Fifth Amendment self-incrimination is “a question of law” subject to de novo review, while “subsidiary factual questions . . . are entitled to a presumption of correctness.” *Secret v. Commonwealth*, 819 S.E.2d 234, 246 (Va. 2018).

SUMMARY OF ARGUMENT

The Court should affirm the trial court’s rulings below that Appellant was not unreasonably seized and that he was not compelled to incriminate himself. A person is not seized if he believes that he is free to leave. *United States v. Mendenhall*, 446 U.S. 544, 554 (1980). But when an officer reasonably concludes “in light of [her] experience that criminal activity may be afoot . . . [,]” she may conduct an investigatory stop of the suspect. *Terry v. Ohio*, 392 U.S. 1, 30 (1968). Reasonable suspicion supporting that conclusion comes from a “reasonable, articulable suspicion” of criminal activity “that a person has

committed or is about to commit” *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000); *Florida v. Royer*, 469 U.S. 491, 498 (1983).

Application of reasonable suspicion may be either directly by the officer who forms the suspicion, or it may be imputed to another officer. *United States v. Hensley*, 469 U.S. 221, 233 (1985); *Edmond v. Commonwealth*, 788 S.E.2d 277, 283–84 (Va. Ct. App. 2016). Such imputed information may come in the form of a flyer, as in *Hensley*, 469 U.S. at 233, or it may be in a description provided during police roll call. *Jones v. Commonwealth*, 334 S.E.2d 536, 539 (Va. 1985). In this case, Agent Huerta developed reasonable suspicion by confirming the tip line description with observations of a matching individual and associated suspicious baggage markings. *See App.* at 36–37. He communicated that information to Officer Hu, who acted on the information by identifying and following a suspect who she observed to match the description, reasonably under the circumstances. *See Jones*, 3324 S.E.2d at 539; *App.* at 17.

Even if the imputed knowledge wasn’t enough to justify Officer Hu’s actions, her own observations of Appellant’s behavior independently established reasonable suspicion. An officer may effect a stop when “facts and circumstances apparent . . . at the time of the stop” would “create in the mind of a reasonable officer in the same position that a violation of the law was occurring or was about to occur.” *Mason v. Commonwealth*, 786 S.E.2d 148, 149 (Va. Ct. App. 2016). Officer Hu’s observation of Appellant while moving through the airport terminal established a reasonable suspicion due to him looking over his shoulder repeatedly, walking very briskly, and sweating profusely in opposition to what would be expected for the season. *See Jones*, 334 S.E.2d at 539; *Mason*, 786 S.E.2d at 149; *App.* at 17–20. While this activity justified her investigatory stop, Appellant’s continued refusal to identify justified his arrest and did not implicate self-incrimination in demanding identification.

Identification is critical in police investigations, and does not comprise a testimonial statement that can rise to self-incrimination. There is a strong government interest in confirming identification to solve crimes, clear suspects, and prevent criminals from remaining at large. *Hensley*, 469 U.S. at 229;

Hiibel v. Sixth Judicial Dist. Ct., 542 U.S. 177, 186 (2004). On the other hand, a right to silence must be considered against “whether an objective observer would view an officer’s words or actions as designed to elicit an incriminating response.” *Thomas v. Commonwealth*, 850 S.E.2d 400, 411 (Va. Ct. App. 2020). Further, requirement to provide identification must be in the interest of public safety. *Herrington v. City of Virginia Beach*, 839 S.E.2d 118, 122 (2020).

Officer Hu’s interest in ascertaining Appellant’s identification had a strong governmental interest and did not implicate his Fifth Amendment rights. Her purpose in asking the question was to rule him out as the suspect imputed from Agent Huerta’s voicemail. *See Hensley*, 469 U.S. at 229; App. at 22. Appellant was in a known drug trafficking location and was engaged in reasonably suspicious behavior to prompt the need to protect the public from drug distribution. *See Herrington*, 839 S.E.2d at 122, App. at 14, 18–22.

ARGUMENT

I. ALTHOUGH OFFICER HU’S PERMISSIBLE QUESTIONING OF APPELLANT BECAME AN INVESTIGATORY STOP, THE STOP WAS PERMISSIBLE UNDER THE FOURTH AMENDMENT.

Officer Hu’s questioning of Appellant was initially a consensual encounter that did not rise to a seizure. A person is only seized “if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.” *United States v. Mendenhall*, 446 U.S. 544, 554 (1980). The defendant in *Mendenhall* was approached by officers searching for drugs, and although they asked her to accompany them, she was found to have complied voluntarily. *Id.* at 559. Like the *Mendenhall* defendant, Appellant demonstrated that he felt free to leave when he voluntarily moved to where Officer Hu asked him to move, and particularly when he asked whether he was under arrest and indicated that he would leave. *See id.*; App. at 20–22. The encounter only changed in character when Officer Hu told Appellant that she “wasn’t letting him go anywhere . . . [.]” at which point the encounter shifted to an investigatory stop requiring reasonable suspicion. *See App.* at 22.

Whether Agent Huerta’s reasonable suspicion was imputed to Officer Hu or she formed her own reasonable suspicion, Officer Hu conducted a permissible investigatory stop of Appellant. An officer may, based on her observation of “unusual conduct which leads [her] to reasonably conclude in light of [her] experience that criminal activity may be afoot . . . [.]” briefly detain a person for investigation. *Terry v. Ohio*, 392 U.S. 1, 30 (1968). If the officer can provide a “reasonable, articulable suspicion” of criminal activity, the stop is in accord with the Fourth Amendment. *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000). An officer may conduct an investigatory stop based on her “articulable suspicion that a person has committed or is about to commit a crime.” *Florida v. Royer*, 460 U.S. 491, 498 (1983). This reasonable suspicion may in turn either be imputed from another officer, or may be developed independently by the officer, either of which satisfies the Fourth Amendment protection against unreasonable seizure.

A. Under the Collective Knowledge Doctrine, Officer Hu Had Reasonable Suspicion to Seize Appellant.

Reasonable suspicion may be based on the officer’s own knowledge, or on knowledge imputed from another officer that independently formed a reasonable suspicion justifying the stop. *United States v. Hensley*, 469 U.S. 221, 233 (1985); *Edmond v. Commonwealth*, 788 S.E.2d 277, 283–84 (Va. Ct. App. 2016) (holding that the reasonable suspicion of the officer issuing the request provides justification to affect the stop as if they were present at the scene). In a strikingly similar case to the one at hand, a report given during afternoon roll call which included a physical description of the suspect, was sufficient to impute reasonable suspicion to the officer to investigate an individual who matched the notice’s description. *Jones v. Commonwealth*, 334 S.E.2d 536, 539 (Va. 1985). Although there was no identification of the suspect given in the notice, the officer’s determination of matching description sufficiently employed the imputed knowledge from the notice, and this reasonable suspicion was not then interrupted by presentation of a tampered-with identification card, which then provided separate grounds for reasonable suspicion. *Id.* at 539–40. These factors strongly support imputation of reasonable suspicion in this case.

Following his investigation in Miami, Agent Huerta had reasonable suspicion to stop the suspect, which could be imputed to Officer Hu. Agent Huerta's observation of "Partinski" matched the description given in the anonymous phone tip, and the observed behavior and baggage tags all satisfied Agent Huerta's experienced understanding of the indications of a likely drug courier. *See App.* at 36–37. Like the officer in *Wardlow*, this reasonable, articulable suspicion was enough to establish Agent Huerta's reasonable suspicion against "Partinski." *See* 528 U.S. at 124. Communicating that suspicion to Officer Hu was then the critical factor to justify the eventual investigatory stop.

Although the description passed through a dispatcher and voicemail, Officer Hu reasonably acted upon Agent Huerta's suspicion. In *Hensley*, an officer who relied upon a two-week old wanted flyer to conduct an investigatory stop did so reasonably when the flyer was "issued on the basis of articulable facts supporting a reasonable suspicion that the wanted person has committed an offense" 469 U.S. at 231. The Court in *Hensley* further suggested that police radio broadcasts could impute knowledge to officers so long as the issuer of the broadcast herself possessed the requisite basis for acting. *See id.* Like the flyer in *Hensley*, the voicemail received by Officer Hu accurately transmitted the suspect's description from Agent Huerta such that she could act on his knowledge, and the transmission of that description was not so removed that the information relayed was materially altered. *See id.*; *App.* at 15–16. But also like the officer in *Jones*, Officer Hu's understanding of the suspect's description, along with a lack of backup and faced with the possibility of losing the identified suspect, acted reasonably when she followed the first individual that she observed to closely match the description exiting the identified flight. *See* 334 S.E.2d at 539; *App.* at 17. Officer Hu's identification of the matching description was a reasonable action based on imputed knowledge from Agent Huerta. But even if the knowledge was not reasonably imputed, Officer Hu's observations of Appellant's behavior provided independent basis upon which she formed reasonable suspicion.

B. Even if Knowledge Gained from Agent Huerta was Not Sufficient to Satisfy Collective Knowledge, Officer Hu's Own Observation of Appellant Satisfied Reasonable Suspicion.

As an officer working on a task force in a known location used by drug couriers, Officer Hu's experience and observations were sufficient to independently support her reasonable suspicion that Appellant was engaged in criminal activity. An officer's knowledge justifies a "reasonable, articulable suspicion" that independently supports her conduct of a *Terry* stop based on behavioral observation in context. *See Wardlow*, 528 U.S. at 124. An officer may reasonably stop a suspect based on "facts and circumstances apparent . . . at the time of the stop" that would "create in the mind of a reasonable officer in the same position a suspicion that a violation of the law was occurring or was about to occur." *Mason v. Commonwealth*, 786 S.E.2d 148, 149 (Va. Ct. App. 2016). Looking closer at the circumstances in *Mason*, the officer was drawn to the defendant through observation of a "dangling object hanging below [the] rear-view mirror" of the vehicle. *Id.* at 150. The court found that the officer's lack of specificity in whether the hanging object satisfied all elements of the relevant law was immaterial so long as a reasonable officer would have suspected criminal activity under the circumstances. *Id.* at 152–53. This reasonable suspicion justified stopping the suspect for further investigation.

Officer Hu's observation of Appellant's activity throughout the airport, made more concrete by Appellant's refusal to identify himself when questioned, similarly justified her reasonable suspicion to stop Appellant. Like the officers in *Mendenhall*, Officer Hu first approached Appellant with questions intended to rule him out as a suspect, conducted in a consensual manner. *See* 446 U.S. at 559; App. at 19. However, prior to that encounter, she observed Appellant looking over his shoulder while moving through the airport terminal, walking very rapidly, and sweating profusely, all behaviors that she interpreted as suspicious, like the behaviors of the defendant in *Jones*. *See* 334 S.E.2d at 539; App. at 17–20. Given her understanding of the likelihood of drug courier activity in the airport, Appellant's refusal to identify himself also contributed to Officer Hu's reasonable suspicion, notwithstanding the fact that the refusal itself constituted a violation of county ordinance. App. at 21–22.

II. OFFICER HU'S DEMAND FOR APPELLANT'S IDENTIFICATION DID NOT COMPEL SELF-INCRIMINATION UNDER THE FIFTH AMENDMENT.

Disclosure of one's name is not a testimonial statement that implicates Fifth Amendment violation. Asking identification supports a "strong government interest in solving crimes and bringing offenders to justice." *Hensley*, 469 U.S. at 229. The Court emphasized that restraining the ability of police to ask identification "not only [would] hinder the investigation, but might also enable the suspect to flee in the interim and to remain at large." *Id.* Identity is critical for safety of officers, clearing a suspect to focus police efforts elsewhere, or to identify "a suspect wanted for another offense." *Hiibel v. Sixth Judicial Dist. Ct.*, 542 U.S. 177, 186 (2004). In *Hiibel*, a sheriff approached a man standing outside a vehicle; inside the vehicle was a young woman, and there were skid marks behind the vehicle. *Id.* at 180. Having found reasonable suspicion to conduct an investigatory stop, the Court further found that the officer's request for identification in the course of that stop did not raise a Fifth Amendment privilege, and it posed "no reasonable danger of incrimination." *Id.* at 189–90. On the other hand, questions asked by police following invocation of a right to silence are considered on "whether an objective observer would view an officer's words or actions as designed to elicit an incriminating response." *Thomas v. Commonwealth*, 850 S.E.2d 400, 411 (Va. Ct. App. 2020). However, the Court found that police describing charges to the suspect was not designed to elicit an incriminating response. *Id.* at 412. Compared to asking for identification, which is information that does not itself admit to anything, this level of detail would be much more likely to result in incriminating responses from a suspect. More directly, an ordinance that criminalizes the refusal to identify to police when surrounding circumstances require such identification is reasonable in the face of "an immediate potential for injury or damage to a person or property." *Herrington v. City of Virginia Beach*, 839 S.E.2d 118, 122 (Va. Ct. App. 2020); *see also Jones*, 334 S.E.2d at 539 (holding that Arlington County Code § 17-13, requiring identification to police, applies under the circumstances of a valid investigatory stop). However, the defendant in *Herrington* was located across a fence, well away from the panhandling activity that police were

investigating. *Id.* at 120–21. The Court found that the lack of “a specific threat to the public safety” could not “indicate to a reasonable man that the public safety require[d] such identification.” *Id.* at 122. In contrast, the case at hand involves a clear threat to public safety through perceived potential drug distribution activity.

In asking Appellant for his identification, Officer Hu did not compel him to self-incriminate. Like the officers in *Hensley*, it was necessary to obtain Appellant’s identification to confirm whether he was the suspect identified in Agent Huerta’s voicemail. *See* 469 U.S. at 229; App. at 22. Suspecting involvement in drug trafficking, like the sheriff in *Hiibel*, Officer Hu had a strong investigatory interest in obtaining Appellant’s identification. *See* 542 U.S. at 186; App. at 21–22. This situation is also in line with the investigation in *Jones*, in that Officer Hu requested Appellant’s identification during a valid investigatory stop in accordance with Arlington County Code § 17-13, in the interest of public safety. *See* 334 S.E.2d at 539; App. at 22. Although failure to identify was a violation of county ordinance, like the officer’s intent in describing charges in *Thomas*, that fact was only peripheral to Officer Hu’s intention to clarify Appellant’s identification with respect to being an alleged drug courier, not to elicit an incriminating statement. *See* 850 S.E.2d at 412; App. at 22. Finally, unlike the defendant in *Herrington*, Appellant was present in a known drug trafficking location and acted in a way reasonably identifiable by Officer Hu as suspicious under the circumstances, together constituting a situation where a request for identification was in the interest of public safety. *See* 839 S.E.2d at 122; App. at 14, 18–22. Therefore, Officer Hu did not compel Appellant to incriminate himself when she asked for his identification during the investigatory stop.

Applicant Details

First Name **Aaron**
 Last Name **Dvorkin**
 Citizenship Status **U. S. Citizen**
 Email Address dvorkin.a@northeastern.edu

Address

Address

Street

221 Chestnut Ave, Apt. 2

City

Boston

State/Territory

Massachusetts

Zip

02130

Country

United States

Contact Phone Number **6176800093**

Applicant Education

BA/BS From **Brandeis University**
 Date of BA/BS **May 2017**
 JD/LLB From **Northeastern University School of Law**
http://www.nalplawsonline.org/ndlsdir_search_results.asp?lscd=12205&yr=2013
 Date of JD/LLB **May 1, 2022**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **Northeastern University Law Review**
 Moot Court Experience **No**

Bar Admission**Prior Judicial Experience**

Judicial
Internships/ **Yes**
Externships
Post-graduate
Judicial Law **No**
Clerk

Specialized Work Experience

Recommenders

Bourquin, Ruth
rbourquin@aclum.org
(617) 482-3170 ext. 348
Ahmed, Sameer
sahmed@law.harvard.edu
McConnell, John
Judge_McConnell@rid.uscourts.gov
401-752-7020

References

Sameer Ahmed
Clinical Instructor
Harvard Immigration and Refugee Clinical Program
Harvard Law School
3085 Wasserstein Hall (WCC)
6 Everett Street
Cambridge, MA 02138
(617) 384-0088
sahmed@law.harvard.edu
Professor Ahmed was my professor for my legal writing course during my first year of law school.

The Honorable John J. McConnell, Jr.
Chief Judge
U.S. District Court for the District of Rhode Island
One Exchange Terrace
Providence, RI 02903
(401) 752-7020
judge_mcconnell@rid.uscourts.gov

I was a judicial intern for Chief Judge McConnell during the fall semester of my second year of law school.

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Aaron Dvorkin

221 Chestnut Ave., Apt. 2, Boston, MA 02130 | 617-680-0093 | dvorkin.a@northeastern.edu

April 7, 2022

The Honorable Elizabeth W. Hanes
United States District Court for the Eastern District of Virginia
Spottswood W. Robinson III and Robert R. Merhige, Jr., Federal Courthouse
701 East Broad Street
Richmond, VA 23219

Dear Judge Hanes:

I am a third-year student at Northeastern University School of Law, and I am writing to apply for a 2022-23 term clerkship in your chambers. I believe that my extensive research and writing experience will enable me to meaningfully contribute to the Court's important work.

As an intern for Chief Judge John J. McConnell, Jr. of the United States District Court for the District of Rhode Island, I researched and drafted six opinions on issues ranging from tax accounting malpractice to subject matter jurisdiction. I had the opportunity to go through the full process of writing an opinion: reading the relevant motions and responsive briefs, conducting additional research on relevant caselaw and legal rules, forming an opinion, and writing the order. In the process, I learned how to evaluate arguments, effectively research a wide array of legal issues, and write in a clear and persuasive manner.

As an intern for the ACLU of Massachusetts, I worked on a broad range of legal issues to further individual civil rights and liberties. I drafted legal memoranda and portions of court briefs relating to such issues as the constitutionality of state vaccine mandates. I assisted staff attorneys with a variety of tasks at different stages of litigation, including formulating discovery requests and researching the law surrounding class certification. The experience helped me further develop my legal research and writing skills and become more familiar with the strategic considerations involved in litigation.

During my internship with the Civil Rights Division of the Massachusetts Attorney General's Office, I researched and wrote legal memoranda exploring the viability of bringing claims against alleged violators of state and federal anti-discrimination laws. I analyzed the possible application of different legal rules, reviewed evidence in the record, developed arguments for bringing claims, and anticipated counterarguments. Through this experience, I improved my legal research and writing skills and gained experience working on cases involving novel legal issues.

Enclosed please find my resume, law school transcript, writing sample, three letters of recommendation, and contact information for two references. Thank you for your time and consideration.

Sincerely,

Aaron Dvorkin

Aaron Dvorkin

221 Chestnut Ave., Apt. 2, Boston, MA 02130 | 617-680-0093 | dvorkin.a@northeastern.edu

EDUCATION

Northeastern University School of Law, Boston, MA

Candidate for Juris Doctor, May 2022

Honors: *Northeastern University Law Review*, Associate Editor (2020-2021), Senior Editor (2021-present)

Teaching Assistant: Legal Research and Writing II, Professor Edward Cheng (Spring 2022)

Research Assistant: Professor Martha Davis (Summer 2021)

IL Social Justice Project: Worked collaboratively to research and write a report regarding the constitutionality of the California Values Act, a statewide “sanctuary” law, for the American Civil Liberties Union of Southern California

Brandeis University, Waltham, MA

Bachelor of Arts, *cum laude*, in Politics and Economics, May 2017

Honors: The Harry S. Levitan Prize (awarded to a graduating senior who exemplifies “kindliness, sympathetic understanding, and high moral character”); Dean’s List (4/8)

Activities: *The Justice*, Opinion Columnist (Jan 2014 – May 2017)

Study Abroad: CIEE Business and Culture, Barcelona, Spain (Spring 2016)

Internship: Office of MA State Representative Kenneth Gordon (seasonally, June 2014 – Aug 2015)

EXPERIENCE

American Civil Liberties Union of Massachusetts, Boston, MA

Sept 2021 – Dec 2021

Legal Intern

Researched and wrote memoranda and portions of court briefs for pending civil rights litigation relating to such issues as legal protections for noncitizens seeking asylum. Formulated discovery requests based on information in the record. Presented research findings during department-wide meetings.

Massachusetts Attorney General’s Office, Civil Rights Division, Boston, MA

Feb 2021 – May 2021

Legal Intern

Researched and wrote memoranda on potential violations of Massachusetts civil rights and anti-discrimination laws in areas such as disability and housing discrimination. Conducted intake calls and followed up with complainants alleging civil rights violations. Presented the facts of complainants’ cases during division-wide meetings.

U.S. District Court, District of Rhode Island, Providence, RI

Aug 2020 – Nov 2020

Judicial Intern for Chief Judge John J. McConnell, Jr.

Researched and drafted six judicial opinions and wrote bench memoranda in civil cases related to issues such as tax accounting malpractice and subject matter jurisdiction. Attended motion hearings in civil cases and sentencing hearings in criminal cases. Observed a civil jury trial.

Justice Brandeis Law Project, Waltham, MA

May 2015 – Aug 2019

(f/k/a The Schuster Institute for Investigative Journalism)

Associate to Founding Director (Dec 2017 – Aug 2019)

Prepared project proposals detailing potential storylines, key events, and timelines, and participated in pitch meetings with major publications. Continued all previously held responsibilities.

Researcher/Reporter (Sept – Dec 2017)

Identified reporting leads and assigned projects to student research assistants while continuing all previously held duties.

Research Assistant (May 2015 – Sept 2017)

Initiated, researched, and wrote detailed, fact-checked memoranda on myriad complex legal and medical issues as part of an investigative journalism project. Drafted and submitted Freedom of Information Act requests to various state and federal agencies, following up with public officials and analyzing information received to find patterns, develop research leads, and establish facts. Traveled to regional courthouses to obtain records and observe and report on court proceedings.



EXPLANATION OF NUSL's GRADING SYSTEM

Our law school has a unique program of cooperative legal education, which combines rigorous academics with on-site legal practice. All students, with the exception of certain transfer students, must complete at least three terms of full-time, law-related work ("co-op").

All students are eligible for High Honors, Honors, Pass, or Fail in all first-year and most upper-level courses. Northeastern University School of Law transcripts list all courses taken and corresponding grades, indicate co-ops completed, and provide narrative evaluations for all academic courses and full-time co-ops. Since summer 2016, academic narrative evaluations have taken the form of highlights, which are intended to supplement a student's honorifics by conveying information about a student's particular strengths.

The Spring 2020 Quarter is an exception. Due to COVID-19, all courses were subject to mandatory Credit or Fail grading, except for the yearlong courses LAW 6160 and 6165.

An "in progress" on a student's transcript indicates that the evaluation has not yet been received from the faculty member.

NORTHEASTERN UNIVERSITY



Northeastern University Registrar

Office of the University Registrar

230-271
360 Huntington Avenue
Boston, MA 02115-5000
email: transcripts@northeastern.edu

web: <http://www.northeastern.edu/registrar/>

Record of: Aaron Dvorkin NUID: 001087099
Issued To: AARON DVORKIN
DVORKIN.A@NORTHEASTERN.EDU
REFNUM:61770463

Primary Program
Juris Doctor
College : School of Law
Major : Law

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
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INSTITUTION CREDIT:

Fall 2019 Law Semester (08/26/2019 - 12/20/2019)

LAW 6100	Civil Procedure	5.00 H	0.000
LAW 6105	Property	4.00 H	0.000

LAW 6106	Torts	4.00 H	0.000
LAW 6160	Legal Skills in Social Context	2.00 HH	0.000
LAW 6165	LSSC: Research & Writing	2.00 HH	0.000
Ehrs:17.000 GPA-Hrs: 0.000 QPts: 0.000 GPA: 0.000			

Spring 2020 Law Semester (01/02/2020 - 05/08/2020)

Due to COVID-19, all courses were subject to mandatory CR/F grading, except for the yearlong courses LAW 6160 and 6165.

LAW 6101	Constitutional Law	4.00 CR	0.000
LAW 6102	Contracts	5.00 CR	0.000
LAW 6103	Criminal Justice	4.00 CR	0.000
LAW 6160	Legal Skills in Social Context	2.00 HH	0.000
LAW 6165	LSSC: Research & Writing	2.00 HH	0.000
Ehrs:17.000 GPA-Hrs: 0.000 QPts: 0.000 GPA: 0.000			

Summer 2020 Law Quarter (05/26/2020 - 08/14/2020)

LAW 7332	Evidence	4.00 P	0.000
LAW 7443	Professional Responsibility	3.00 H	0.000
LAW 7606	Drug Law and Policy	3.00 H	0.000
LAW 7660	Cradle-to-Prison Pipeline	3.00 HH	0.000
Ehrs:13.000 GPA-Hrs: 0.000 QPts: 0.000 GPA: 0.000			

Fall 2020 Law Quarter (08/24/2020 - 11/13/2020)

COOP: U.S. Dist. Court, Dist. of Rhode Island,
***** CONTINUED ON NEXT COLUMN *****

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
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Comments Continued:

Judge McConnell

Providence, RI

LAW 7964	Co-op Work Experience	0.00 CR	0.000
Ehrs: 0.000 GPA-Hrs: 0.000 QPts: 0.000 GPA: 0.000			

Winter 2021 Law Quarter (11/16/2020 - 02/12/2021)

LAW 7398	Federal Crts & the Fed System	4.00 H	0.000
LAW 7469	Disability Law	3.00 H	0.000
LAW 7525	Law and Economic Development	3.00 H	0.000
LAW 7539	Employment/Job Security Rights	3.00 H	0.000
Ehrs:13.000 GPA-Hrs: 0.000 QPts: 0.000 GPA: 0.000			

Spring 2021 Law Quarter (02/16/2021 - 05/07/2021)

COOP: Mass. Attorney General's Office,
Civil Rights Div.
Boston, MA

LAW 7966	Public Interest Co-op Work Exp	0.00 CR	0.000
Ehrs: 0.000 GPA-Hrs: 0.000 QPts: 0.000 GPA: 0.000			

Summer 2021 Law Semester (05/10/2021 - 08/25/2021)

LAW 7336	Immigration Law	3.00 HH	0.000
LAW 7377	Trusts and Estates	4.00 HH	0.000
LAW 7448	Employment Discrimination	3.00 H	0.000
LAW 7665	Housing Law	3.00 HH	0.000
LAW 7934	Law Review - Senior Editor	0.50 CR	0.000
LAW 7983	Writing for Litigation	1.00 HH	0.000
Ehrs:11.500 GPA-Hrs: 0.000 QPts: 0.000 GPA: 0.000			

Fall 2021 Law Semester (08/30/2021 - 12/22/2021)

COOP: ACLU of Mass.
Boston MA

***** CONTINUED ON PAGE 2 *****

Page: 1

Siham Doughman

Assoc. VP & University Registrar

NORTHEASTERN UNIVERSITY



Northeastern University Registrar

Office of the University Registrar

230-271
360 Huntington Avenue
Boston, MA 02115-5000
email: transcripts@northeastern.edu

web: <http://www.northeastern.edu/registrar/>

Record of: Aaron Dvorkin

NUID: 001087099

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
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Institution Information continued:

IN PROGRESS WORK

LAW 7966 Public Interest Co-op Work Exp 0.00 IN PROGRESS

In Progress Credits 0.00

***** TRANSCRIPT TOTALS *****

	Earned Hrs	GPA Hrs	Points	GPA
TOTAL INSTITUTION	71.500	0.000	0.000	0.000

TOTAL TRANSFER	0.000	0.000	0.000	0.000
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OVERALL	71.500	0.000	0.000	0.000
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***** END OF TRANSCRIPT *****

Page: 2

Siham Doughman

Assoc. VP & University Registrar

Northeastern University, Office of the Registrar
271 Huntington Ave.
Boston, MA 02115

SCALE OF GRADES AND COMMENTS TO ACCOMPANY TRANSCRIPTS

Effective Fall 2016: College of Professional Studies undergraduate programs converted from a quarter system to a semester system. For student records including hours earned prior to fall 2016, the credit hour conversion rate is as follows: QH x .75. For example a 4-credit quarter course is now equivalent to a 3-credit semester course.

Effective Fall 2009: Northeastern University converted its Student Information System. All courses and Programs were converted.

Northeastern University Course Numbering

UNDERGRADUATE

Orientation and Basic 0001-0999
No degree credit

Introductory Level (First year) 1000-1999
Survey, Foundation and Introductory courses normally with no prerequisites and designed primarily for students with no prior background

Intermediate Level (Sophomore/Junior year) 2000-2999
Normally designed for sophomores and above, but in some cases open to freshman majors in the department.

Upper Intermediate Level (Junior year) 3000-3999
Designed primarily as courses for juniors. Pre-requisites are normally required and these courses are pre-requisites for advanced courses.

Advanced Level (Senior year) 4000-4999
Designed primarily for juniors and seniors, or specialized courses. Includes research, capstone and thesis.

GRADUATE

Orientation and Basic 0001-0999
No degree credit

1st level graduate 5000-5999
Courses primarily for graduate students and qualified undergraduate students with permission

2nd level graduate 6000-6999
Generally for Master's only and Clinical Doctorate

3rd level graduate 7000-7999
Master's and Doctoral level classes. Includes Master's Thesis

Clinical/Research/Readings 8000-8999
Includes Comprehensive Exam Preparation

Doctoral Research and Dissertation 9000-9999

Northeastern University Grade Scale

Letter Grade	Numerical Equivalent	Explanation
A	4.0	Outstanding Achievement
A-	3.667	
B+	3.333	
B	3.0	Good Achievement
B-	2.667	
C+	2.333	
C	2.0	Satisfactory Achievement
C-	1.667	
D+	1.333	
D	1.0	Poor Achievement
D-	0.667	
F	0.0	Failure
I		Incomplete
IP		In Progress
NE		Not Enrolled
NG		Grade not reported by Faculty
S		Satisfactory (Pass/Fail basis; counts toward total degree requirements)
U		Unsatisfactory (Pass/Fail basis)
X		Incomplete (Pass/Fail basis)
L		Audit (no credit given)
T		Transfer
W		Course Withdrawal

Course Comments

E	Course excluded from GPA
HON	Honors level course
I	Course included in GPA

LAW SCHOOL

CR	Credit
F	Fail
H	Honors
HH	High Honors
I	Incomplete
MP	Marginal Pass
P	Pass

Earned Hours

Northeastern University offers both quarter hour and semester hour programs.

Quarter Hours to Semester Hours Conversion Rate: For student records including quarter hours, the approved semester hour conversion rate is as follows: QH x .75. For example a 4-credit quarter course is equivalent to 3 credit semester courses.

Fall 2021 : Aaron Dvorkin - Fall 2021 Co-op - Alt. Contact (88378) (ACLU of Mass. (Boston MA))

EMPLOYER FINAL EVALUATION

Approve	Yes
Requested On	Dec 22, 2021 8:38 pm
Student	Aaron Dvorkin
Date Employed From:	September 21, 2021
Date Employed To:	December 22, 2021
Address	211 Congress Street, Boston MA 02110
Employer Name	ACLU of Mass. (Boston MA)
1) Areas of law engaged in, and level of proficiency	Aaron produced high quality work in a wide range of topics, including immigration law, public records law, free exercise of religion issues, an amicus brief concerning free speech and due process issues, District Attorney accountability and our class action lawsuit on behalf of unhoused people residing at Mass & Cass.
2) Skills demonstrated during the co-op	Aaron's legal research and analytical skills are superlative. As an example, he was asked to research and analyze issues related to whether religious exemptions are required with regard to vaccination requirements for public employees. The resulting analysis was thorough and nuanced and highlighted arguments that staff attorneys had not yet identified and that have not been as thoroughly explained in litigation that has gone to the U.S. Supreme Court. His contributions to a preliminary injunction matter were directly incorporated into a court filing, and his contributions to the expected amicus brief in the free speech/due process case are outstanding and will directly influence arguments that will be made. Indeed, numerous attorneys commented on his thorough research, attention to record details, and his clear, concise writing.
3) Professionalism, work ethic, and responsiveness to feedback	Aaron's work ethic is excellent. He jumped into a matter that was in the midst of emergency litigation and never hesitated to assist whenever help was needed, including during nights & weekends. He similarly was dogged in his advocacy work and monitoring of the rocket docket at the Boston Immigration Court, flagging cases and issues that urgently needed raising and going well beyond what was asked of him on multiple occasions.

4) Ability to work with colleagues and clients; ability to integrate knowledge from other disciplines

Aaron's interaction with our clients in our emergency litigation demonstrated his careful listening skills and compassion for clients' perspective. In that same litigation, he also worked well with both staff attorneys at our organization & cooperating counsel at a private law firm, demonstrating excellent collegiality under time-pressed circumstances. He is very pleasant to work with, professional & a good communicator.

5) Further details about the student's performance

Aaron is going to be a fantastic attorney. We are going to miss him, but we are very grateful to have had the opportunity to work with him.

Submitted by:

Jessie J. Rossman

Date submitted:

December 22, 2021

Help Desk: 703-373-7040 (Hours: Mon-Fri. 9am-8pm EST)
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6/4/2021

Northeastern Law CSM

Spring 2021 : Aaron Dvorkin - Spring 2021 Co-op (83903) (Mass. Attorney General's Office, Civil Rights Div. (Boston, MA))

EMPLOYER FINAL EVALUATION

Approve	Yes
Requested On	Jun 02, 2021 4:18 pm
Student	Aaron Dvorkin
Date Employed From:	February 22, 2021
Date Employed To:	May 7, 2021
Address	One Ashburton Place, Boston, MA 02108
Employer Name	Mass. Attorney General's Office, Civil Rights Div. (Boston, MA)
1) Areas of law engaged in, and level of proficiency	<p>Aaron worked on several matters and projects that spanned different aspects of the CRD's work. This involved producing legal memoranda, conducting and memorializing fact research, and working with the CRD's intake team.</p> <p>Through his work, Aaron dealt with issues such as: the potential liability of software companies for unlawful acts their customers carry out using their products; whether apartment holding fees run afoul of the state fair housing law; the standard a landlord has to meet when considering a tenant's reasonable accommodation request; and the legal and regulatory protections providing for access to medical treatment for transgender children.</p>
2) Skills demonstrated during the co-op	<p>Aaron excelled at legal research and writing. He impressed us with his ability to efficiently complete research projects and produce memoranda that included well-developed legal analyses. He demonstrated a strong grasp of relevant legal authority and a facility for thinking through more novel legal issues, which arose in a majority of the projects that he worked on. Aaron also performed well in reviewing investigatory materials in a matter involving a complex set of facts and numerous actors, and had a keen eye for detail in evaluating the contents of the materials for relevancy to a potential enforcement action. The</p>

6/4/2021

Northeastern Law CSM

nature of the internship did not provide Aaron with opportunities for written or oral advocacy.

3) Professionalism, work ethic, and responsiveness to feedback

Aaron was diligent, thorough, and efficient in his research and writing. He submitted well-developed drafts ahead of deadlines. It was clear based on his written work product that Aaron understood the issues and where I or other staff had feedback on substance or other aspects of his writing, he received such feedback well and incorporated it in subsequent drafts. He was attentive during meetings and based on his work product he understood what the assignments he worked on called for.

4) Ability to work with colleagues and clients; ability to integrate knowledge from other disciplines

Aaron worked well with myself and the other staff in the CRD. Due to the pandemic, the Attorney General's Office has been remote since March 2020. This meant, unfortunately, that Aaron did not have the opportunity to meet in person with complainants; however, he did have opportunities to speak with complainants by phone, which he did very ably. In what I observed, Aaron is also a standout questioner. Aaron and I had a phone conversation with a complainant and the questions he asked were direct, clear, and well-crafted to elicit information that was relevant for his work evaluating one of the complainant's potential claims.

5) Further details about the student's performance

It was a pleasure to work with Aaron. He was eager to learn, take on work, and develop his legal skills. I found Aaron to be personable, intelligent, and hard-working.

Submitted by:

David Urena

Date submitted:

June 2, 2021

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Help Desk: 703-373-7040 (Hours: Mon-Fri, 9am-8pm EST)
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11/13/2020

Northeastern Law CSM

Fall 2020 : Aaron Dvorkin - Fall 2020 Apply Direct (77615) (U.S. Dist. Court, Dist. of Rhode Island, Judge McConnell (Providence, RI))

EMPLOYER FINAL EVALUATION

Approve	Yes
Requested On	Nov 09, 2020 9:32 am
Student	Aaron Dvorkin
Date Employed From:	August 24, 2020
Date Employed To:	November 13, 2020
Address	One Exchange Terrace, Providence, RI 02903
Employer Name	U.S. Dist. Court, Dist. of Rhode Island, Judge McConnell (Providence, RI)
1) Areas of law engaged in, and level of proficiency	Aaron has been one of our most prolific interns! He worked on about ten different cases during his time with the court. He wrote memos and drafted opinions in cases dealing with FMLA retaliation, choice of law, judicial review of an arbitration award, subject matter jurisdiction, and breach of an employment contract to name a few.
2) Skills demonstrated during the co-op	Aaron drafted memos outlining and highlighting the legal issues and prepared draft opinions. His work was always top notch and final draft quality. His analysis was spot on - well researched, thorough, and persuasive. He was always able to communicate his thoughts and positions clearly and convincingly.
3) Professionalism, work ethic, and responsiveness to feedback	Aaron is very mature. He acted professionally and worked extremely hard on his cases. We give a lot of feedback in chambers and he always responded with an eagerness to learn and an interest in turning out the best written product. This was not a "normal" quarter in terms of work environment, but Aaron rolled with it and was an excellent addition to our crew.
4) Ability to work with	

11/13/2020

Northeastern Law CSM

**colleagues and clients;
ability to integrate
knowledge from other
disciplines**

Aaron is an easy going person and was a joy to work with. He was eager to learn no matter the subject matter and willing to take on every assignment we have him. Again, we weren't able to be together as much as we normally would, but everyone in chambers enjoyed working with Aaron.

**5) Further details about
the student's
performance**

Aaron was an excellent student intern and became a valued member of our chambers group. His work was exceptional.

Submitted by:

Chief Judge John J. McConnell, Jr.

Date submitted:

November 11, 2020

Help Desk: 703-373-7040 (Hours: Mon-Fri. 9am-8pm EST)
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Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student: Dvorkin, Aaron
Exam #: 90137
Course Title: Housing Law
Course ID: LAW 7665
Credits: 3
Term: Summer 2021 Law Semester
Instructor : Mangiafico, S
Grade: High Honors

Course Description:

Presents an overview of housing laws in the United States. Topics include affordable housing, housing discrimination and regulation of rents. Examines the Fair Housing Act and legal strategies to achieve fair and affordable housing.

Performance Highlights:

Your performance in this course was very good. Your exam shows a very good command of the Fair Housing Act as well as current housing law policy issues.

Prof. Llliana Mangiafico

Date: 10.13.2021 5:44PM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student: Dvorkin, Aaron
Exam #: 90137
Course Title: Immigration Law
Course ID: LAW 7336
Credits: 3
Term: Summer 2021 Law Semester
Instructor : Gundavaram, Hemanth
Grade: High Honors

Course Description:

This course is designed to give the student an overview of U.S. immigration law. The focus is on the day-to-day practice of immigration law, including an examination of the substantive and procedural aspects of this practice, and a historical analysis of the changes in our immigration laws and policies. Topics covered include non-immigrant and immigrant classifications, the preference system for immigrants, grounds of inadmissibility and deportability, relief from removal, asylum, citizenship, administrative and judicial review, and the immigration consequences of crimes.

Performance Highlights:

- Performed exceptionally well on the final exam.
 - Acquired a comprehensive understanding of immigration law.
 - Demonstrated superb legal writing and analysis skills.
 - Completed many complicated and difficult immigration law hypotheticals.
-

Date: 10.11.2021 2:13PM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student:	Dvorkin, Aaron
Exam #:	90137
Course Title:	Employment Discrimination
Course ID:	LAW 7448
Credits:	3
Term:	Summer 2021 Law Semester
Instructor :	Davis, Joshua
Grade:	Honors

Course Description:

The Employment Discrimination course focuses on Title VII of the 1964 Civil Rights Act. It surveys the Supreme Court's decisions in this ever-changing area of law—including the recent decisions in Nassar and Vance, which reflect the efforts of the current Court to reduce the number of cases filed in this area.

Performance Highlights:

This summer's Employment Discrimination course included three opportunities for evaluation. The first was a one on one counseling exercise in which the student advised the teacher (as client) addressing a sexual harassment problem in a fictional law firm. The second, and most important, was the final examination. That examination consisted of two questions. The first extended the scenario of the counseling exercised and called for a focused evaluation of a sex harassment / retaliation problem. The second was a much more traditional issue spotting question that asked the students to wade through many facts in search of a relatively few potentially viable claims.

Aaron did very good to excellent work in all aspects of the course. He was a frequent and valuable classroom participant. He offered good counsel to his client in the counseling exercise. His examination was similarly strong -- notable in particular for an absolutely excellent answer to the long issue spotting question.

Date:	9.27.2021 4:45PM
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Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student: Dvorkin, Aaron
Exam #: 90137
Course Title: Law Review - Senior Editor
Course ID: LAW 7934
Credits: 0
Term: Summer 2021 Law Semester
Instructor : Persons, Sharon
Grade: Credit

Course Description:

Offers those who have completed one term of staff work as associate editor or who have otherwise been promoted at the discretion of the editorial board the position of senior editor at the Northeastern University Law Review. Senior editors work under the supervision of faculty advisors and editorial board members in support of the mission of the Law Review: to publish legal scholarship in its flagship print journal and online platforms. Tasks may include citation checking, editing, supervision of associate editors, assistance with the writing competition and new member selection, and other duties in support of publishing content. Students may take up to 1 credit in each of their second-year and third-year terms with permission of the instructor. Graded on a credit/fail basis.

Performance Highlights:

Each student engages in hours of learning and legal skill development through the management, submission, review, editing, and publishing process in the following areas: knowing and understanding the law; legal analysis, reasoning, and problem-solving; communication; professionalism; team lawyering skills, managing conflict, and forging relationships; as well as factual and legal investigation and research.

Date: 9.27.2021 1:23PM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student:	Dvorkin, Aaron
Exam #:	90137
Course Title:	Trusts and Estates
Course ID:	LAW 7377
Credits:	4
Term:	Summer 2021 Law Semester
Instructor :	Campia, Peter
Grade:	High Honors

Course Description:

This basic course covers all aspects of inheritance, including intestacy, wills, common modern will substitutes, trusts, and future interests, with attention to rights of spouses and children, charitable interests, fiduciary duty, and other issues. The focus is practical, and students are required to write numerous short exercises—including analysis, planning advice, and formal drafting—to address realistic problems.

Performance Highlights:

Course: Trusts & Estates

Grade: High Honors Credits: 4

Highlights:

- . Acquired comprehensive overview of the requirements of will drafting and execution under the Uniform Probate Code (UPC); probate administration under the Uniform Probate Code (UPC) and the requirements of the Uniform Trust Code (UTC) codifying the law on trusts.
- . Demonstrated superb legal writing and analysis skills.
- . Made valuable contributions to class discussions.

Date: 9.27.2021 1:54AM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student:	Dvorkin, Aaron
Exam #:	90137
Course Title:	Writing for Litigation
Course ID:	LAW 7983
Credits:	1
Term:	Summer 2021 Law Semester
Instructor :	Leahy, Stefanie
Grade:	High Honors

Course Description:

This 1-credit course will introduce students to writing for litigation, including engagement and demand letters, complaints, answers, discovery requests (interrogatories, RFPs, RFAs etc.), and motions. Using Writing for Litigation, the Aspen Coursebook Series authored by Kamela Bridges and Wayne Schiess, students will focus on understanding: (1) the audience of a litigation document (2) the purpose (3) the proper components (4) relevant strategic considerations for documents, and (5) general principles that apply to all litigation documents. Over the course of two weeks, students will have the opportunity to review and draft a variety of litigation documents, to find and modify relevant samples, and to find and apply the specific rules of any jurisdiction where they are practicing. This course will also touch on the protections of attorney client privilege and attorney work product throughout litigation.

Performance Highlights:

Over the course of two weeks, Aaron had the opportunity to work collaboratively with other students to discuss and draft a variety of litigation documents. Aaron consistently produced high quality work. He successfully modified a 93A Letter, edited a Complaint, drafted a portion of an Answer, and produced a tightly written Motion in Limine. Considering the amount of work required in such a short period of time, Aaron displayed excellent time management skills. In his final reflection, Aaron highlighted his takeaways from the course, including the many ways in which non-legal considerations impact the effectiveness of advocacy. He understands the importance of paying attention to variable factors within litigation, including for example the presiding judge or the cost implications to the client.

Aaron is a highly competent student.

Date:	8.29.2021 9:27AM
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Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student:	Dvorkin, Aaron
Exam #:	22142
Course Title:	Disability Law
Course ID:	LAW 7469
Credits:	3
Term:	Winter 2021 Law Quarter
Instructor :	Baker, Brook
Grade:	Honors

Course Description:

This course explores how the law treats individuals with disabilities. We will analyze what is meant by the term “disability” and consider constitutional review of state actions discriminating against individuals with disabilities. Particular attention will be given to the the rights and obligations created by the Rehabilitation Act, the Americans with Disabilities Act and the Individuals with Disabilities Education Act. The rights of individuals with disabilities to be educated, work, receive healthcare, and enjoy public accommodations will be considered in depth. This course is designed for students wishing to represent individuals with disabilities as well as students who may represent employers and public accommodations.

Performance Highlights:

Notable Achievements:

- Aaron constructively engaged in class discussions and in-class exercises.
- Aaron critically examined current approaches to achieving disability and mental health justice.
- Aaron wrote a very interesting and well written paper, “A Substitute for Judgment: How Substituted Judgment is Misused and How it Can be Fixed.” He surveyed the fraught issue of how to make treatment decisions for people who are presently legally incompetent. After surveying the history of substituted judgment, he proposed a policy alternative that might be used in contexts where evidence of the incompetent person’s actual or probable wishes are uncertain – namely resort to an impartial surrogate.

Date:	3.15.2021 2:46PM
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Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student: Dvorkin, Aaron
Exam #: 22142
Course Title: Federal Crts & the Fed System
Course ID: LAW 7398
Credits: 4
Term: Winter 2021 Law Quarter
Instructor : Williams, Lucy
Grade: Honors

Course Description:

The subject of this course is the distribution of power between the states and the federal government, and between the federal courts and other branches of the federal government as manifested in jurisdictional rules of the federal courts. The topics covered include the nature of the federal judicial function, the review of state court decisions by the United States Supreme Court, and the jurisdiction of federal district courts, with special emphasis on actions claiming constitutional protection against state official actions.

Performance Highlights:

- You identified most all of the issues.
- Your analysis reflected a solid understanding of the complex materials covered in the course.
- You cited to relevant and evolving case law and applied it to the facts of the hypotheticals.
- Your discussions of standing and 1983 causes of action were particularly strong.
- Your paper was well written.

Date: 3.13.2021 5:44PM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student: Dvorkin, Aaron
Exam #: 22142
Course Title: Employment/Job Security Rights
Course ID: LAW 7539
Credits: 3
Term: Winter 2021 Law Quarter
Instructor : Ainbinder, Stephanie
Grade: Honors

Course Description:

This course surveys legal and policy issues concerning job security, focusing primarily on law governing the termination of private sector employment. Students develop an understanding of the history and scope of the underlying employment-at-will doctrine and the primary ways in which the at-will doctrine has been modified through common law and statute.

Performance Highlights:

Your exam answer addressed all of the major issues in the hypothetical and analyzed them well. I found your argument about amending Title VII to provide for a wider range of damages to plaintiffs who succeed in a mixed motive claim to be quite persuasive and thoughtful. You gave an engaging presentation about collective bargaining agreements, that thoughtfully weaved together many sources and areas of law. You were well-prepared for class every day. Well done!

Date: 3.12.2021 3:38PM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student:	Dvorkin, Aaron
Exam #:	22142
Course Title:	Law and Economic Development
Course ID:	LAW 7525
Credits:	3
Term:	Winter 2021 Law Quarter
Instructor :	Danielsen, Dan
Grade:	Honors

Course Description:

Examines prevailing economic theories of and strategies for economic development and the legal and institutional frameworks devised to implement these strategies. Considers what kinds of legal and institutional arrangements best facilitate economic growth, how law structures and shapes markets, what “development” is and how it can best be measured, and whether legal instruments can be used effectively to address underdevelopment in a structural way. Focuses on development in the so-called developing world while also exploring some strategies for addressing development in a local community context. Addresses several development case studies posing particular problems in specific regions and contexts. With permission of instructor, students may register for an additional credit by completing a substantial paper (in addition to other course requirements) as required by the instructor.

Performance Highlights:

Your examination evidenced your understanding of a number of the theories of development we studied and your ability to analyze those theories through the lens of inequality.

Your short papers were thoughtful reflections on the material you were analyzing in the context of broader themes and issues raised in the course.

Though your participation in class discussions was infrequent, your active engagement in small group exercises evidenced a commitment to group learning and a good grasp of the substantive issues under discussion.

Date: 3.9.2021 4:53PM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student: Dvorkin, Aaron
Exam #: 21296
Course Title: Evidence
Course ID: LAW 7332
Credits: 4
Term: Summer 2020 Law Quarter
Instructor : Borenstein, Isaac
Grade: Pass

Course Description:

This course examines how courtroom lawyers use the evidence rules to present their cases—notably, rules regarding relevance, hearsay, impeachment, character, and experts. The approach to the study of evidence will be primarily through the “problem” method—that is, applying the provisions of the Federal Rules of Evidence to concrete courtroom situations. Theoretical issues will be explored as a way to deepen the student’s appreciation of how the evidence rules can and ought to be used in litigation.

Performance Highlights:

This was a very good answer, as you addressed most of the issues in an articulate way. Well done.

Date: 10.22.2020 3:32PM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student: Dvorkin, Aaron
Exam #: 21296
Course Title: Drug Law and Policy
Course ID: LAW 7606
Credits: 3
Term: Summer 2020 Law Quarter
Instructor : Beletsky, Leo
Grade: Honors

Course Description:

The field of Drug Law is vast, spanning the discovery, manufacture, distribution, and consumption of chemical agents designed to alter the human condition. This course focuses on three domains of the broader subject: the evolution and current state of the Federal Food, Drug, and Cosmetic Act; the architecture of the drug regulation system in the U.S., including the distinct space occupied by the Food and Drug Administration, the Department of Agriculture, and the Drug Enforcement Agency; and the role of regulation and tort litigation in harmonizing drug policy with science. Designed around legal and policy case studies, this course is intended for students expecting to become involved in clinical practice involving pharmaceuticals as well those generally interested in the interplay of law and public health.

Performance Highlights:

Your class engagement was commendable. You made thoughtful contributions to discussions and policy debates.

Your public comment brief on proposed FDA regulations covering abuse-deterrent formulations of stimulant medications was clear, persuasive, and made good use of empirical data. You demonstrated a fluent grasp of the complex material at the intersection of FDA drug regulation and medical practice.

Your final paper provided a timely and well-articulated overview of the reforms necessary to modernize the Controlled Substances Act. This paper was thoroughly researched, timely, and compelling. You demonstrate a strong grasp of the CSA's scheduling provisions, along with the historical and scientific context for this regulatory regime. Skillful use of the cannabis case study makes this a very persuasive workproduct. Your final presentation stood out for its effective delivery of complex information in a concise format.

Overall, a very strong performance.

Date: 10.19.2020 4:04PM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student: Dvorkin, Aaron
Exam #: 21296
Course Title: Cradle-to-Prison Pipeline
Course ID: LAW 7660
Credits: 3
Term: Summer 2020 Law Quarter
Instructor : Mangiafico, S
Grade: High Honors

Course Description:

This course examines how we construct the cradle/school to prison pipeline while focusing on several pivotal points that channel largely poor Black and Brown students into it. With an eye toward practical application, students will learn about, critique, problem solve and create pipeline disrupting solutions looking to restorative justice as a time-honored justice paradigm alternative to our western constructions.

Performance Highlights:

Aaron's work in this course was very good. He meaningfully contributed to small group and large class discussions. Aaron's interactions with me, guest speakers and his peers were always respectful and professional. His final paper, Addressing Dual Involvement of Youth Residents of Massachusetts Group Homes, contained important findings and data showing specific causes contributing to poor educational outcomes of dually involved children and presented specific recommendations for improvement. The paper was well written and structured. Aaron presented his findings in class and was able to assertively answer questions from me and his classmates.

Date: 9.21.2020 10:56AM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student:	Dvorkin, Aaron
Exam #:	21296
Course Title:	Professional Responsibility
Course ID:	LAW 7443
Credits:	3
Term:	Summer 2020 Law Quarter
Instructor :	Drew, Melinda
Grade:	Honors

Course Description:

This course focuses on the legal, ethical and professional dilemmas encountered by lawyers. Emphasis is on justice as a product of the quality of life that society provides to people rather than merely the process that the legal system provides once a crime or breach of duty has occurred. The course also provides students with a working knowledge of the American Bar Association's Model Rules of Professional Conduct and the Code of Professional Responsibility as well as an understanding of the underlying issues and a perspective within which to evaluate them. In addition, the course examines the distribution of legal services to poor and non-poor clients.

Performance Highlights:

When called upon in class or volunteering to answer a question or offer an opinion you were prepared and able to identify and apply the relevant rule(s) to the given problem.

You wrote an excellent answer to an assigned confidentiality problem involving a client telling his lawyer that he killed a man whose children now might or might not be in danger, and what his lawyer could or could not do with the information. In it you demonstrated that you understand confidentiality and can skillfully analyze a problem that posed a confidentiality issue.

Date:	9.4.2020 1:39PM
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Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student:	Dvorkin, Aaron
Exam #:	19529
Course Title:	Contracts
Course ID:	LAW 6102
Credits:	5
Term:	Spring 2020 Law Semester
Instructor :	Phillips, David
Grade:	Credit

Course Description:

This course examines the legal concepts governing consensual and promissory relationships, with emphasis on the historical development and institutional implementation of contract theory, its relationship and continuing adaptation to the needs and practice of commerce, and its serviceability in a variety of non-commercial contexts. Topics covered include contract formation, the doctrine of consideration, remedies for breach of contracts, modification of contract rights resulting from such factors as fraud, mistake and unforeseen circumstances, and the modern adaptation of contract law to consumer problems. This course also introduces students to the analysis of a complex statute: the Uniform Commercial Code.

Performance Highlights:

Your performance on the examination was very strong, demonstrating superior knowledge of the law and analysis of the problems.

Your writing and the organization of your answers were excellent.

Thank you for your active participation in class discussions.

Date: 6.17.2020 3:59PM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student:	Dvorkin, Aaron
Exam #:	19529
Course Title:	Criminal Justice
Course ID:	LAW 6103
Credits:	4
Term:	Spring 2020 Law Semester
Instructor :	Cavallaro, Rosanna
Grade:	Credit

Course Description:

In this course, students are introduced to the fundamental principles that guide the development, interpretation and analysis of the law of crimes. They are also exposed to the statutory texts—primarily the Model Penal Code, but also state statutes. In addition, students are introduced to the rules and principles used to apportion blame and responsibility in the criminal justice system. Finally, students examine the limits and potential of law as an instrument of social control.

Performance Highlights:

- * Your exam was well organized and well written, and demonstrated good general issue-spotting skills;
 - * In terms of substance, you showed a good comprehension of criminal law rules, especially those relating to capital punishment and strict liability.
-

Date:	6.9.2020 3:56PM
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Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student:	Dvorkin, Aaron
Exam #:	19529
Course Title:	Constitutional Law
Course ID:	LAW 6101
Credits:	4
Term:	Spring 2020 Law Semester
Instructor :	Davis, Martha
Grade:	Credit

Course Description:

Studies the techniques of constitutional interpretation and some of the principal themes of constitutional law: federalism, separation of powers, public vs. private spheres, equality theory and rights analysis. The first part of the course is about the powers of government. The second part is an in-depth analysis of the 14th Amendment.

Performance Highlights:

Your final exam was a strong performance, with several parts that demonstrated great facility with constitutional analysis. The exam consisted of a series of complex fact patterns. In each instance, you brought case law and legal reasoning to bear in analyzing possible constitutional claims and limitations raised by the fact patterns. Your treatment of Congressional power under Section 5 of the 14th amendment was particularly impressive, and you also provided a thoughtful answer to a question about the Youngstown case and Presidential power. Your exam was consistently well-written and nicely organized.

Your take-home midterm assignment, an analysis of a 14th amendment problem, was notably strong. You also offered a thoughtful contribution to our on-line class discussions.

This was a tough COVID term, so congratulations on completing the term with a very strong performance.

Date:	6.9.2020 3:54PM
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Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student:	Dvorkin, Aaron
Exam #:	19529
Course Title:	LSSC: Research & Writing
Course ID:	LAW 6165
Credits:	2
Term:	Spring 2020 Law Semester
Instructor :	Ahmed, Sameer
Grade:	High Honors

Course Description:

Competent and effective legal research and writing skills are the foundation for students' success in law school and in their legal careers. In LSSC's Legal Analysis, Research and Writing component, students learn about the organization of the American legal system, the sources and construction of laws, and how the application of laws may vary with the specific factual situation. Students learn how to research the law to find applicable legal rules, how to analyze and apply those rules to a factual situation, and how to communicate their legal analysis clearly and concisely to different audiences.

Performance Highlights:

Aaron's performance in this class was excellent. Aaron has strong analytical skills, including an ability to think creatively about the application of law to fact that will make him an effective advocate. Aaron consistently demonstrated strong research skills as well and has a clear ability to find and distill relevant authority in furtherance of his analysis. He also has very strong writing skills – his writing is always well-organized, clear, and concise, and he pays appropriate attention to detail with respect to formatting requirements and citation. Aaron's oral advocacy skills are impressive as well; in his final oral argument he demonstrated a very natural and strong court room presence and presented a compelling argument on behalf of his client. In short, Aaron possesses the intellect and skill to be an excellent attorney.

Date: 5.5.2020 2:26PM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student: Dvorkin, Aaron
Exam #: 19529
Course Title: Legal Skills in Social Context
Course ID: LAW 6160
Credits: 2
Term: Spring 2020 Law Semester
Instructor : Ahmed, Sameer
Grade: High Honors

Course Description:

The LSSC Social Justice component immediately applies students' legal research and writing skills in using law as a tool for social change. LSSC links students' pre-law school thinking with the new legal culture in which they find themselves. In the first semester, they begin by forging their own team lawyering dynamic in discussing assigned readings and in preparing, and presenting, several advocacy exercises and written assignments. In the second semester, students apply and consolidate their new legal research and writing skills in addressing an intensive real-life social justice project for a selected client organization. LSSC student teams develop their legal and cooperative problem-solving skills and knowledge while producing real client work of a quality that far exceeds the ordinary expectations of first-year law students. May be repeated once.

Performance Highlights:

As a part of the LSSC course, a group of 14-15 law students, called a "Law Office" (LO), work together on a year-long social justice project on behalf of a community-based organization. Aaron was a member of LO4, who worked on a project on behalf of the ACLU of Southern California. The aim of the project was to analyze the California Values Act, the State of California's novel "sanctuary" law protecting the state's immigrant population from cruel and excessive federal immigration enforcement. The project's goal was to draft a statewide report on the California Values Act after analyzing data received from the ACLU of Southern California, the state and federal cases challenging the California Values Act, and other publicly available data. In order to accomplish this goal, students conducted extensive research into the California Values Act, its implementation throughout the state, and the reasons behind its implementation. As a whole, LO4 was collaborative, collegial, and high-functioning. When working as a team, LO4 remained focused on the necessary tasks, and was productive during their meetings, even when operating without faculty supervision. Their performance—individually, in sub-groups, and as a full group—was excellent, and it was evident in the final work product. The partner organization was impressed by LO4's final work product and presentation and commented that the work far surpassed their expectations of first-year law students.

Aaron was a valuable member of the LO, who made significant contributions to the group's overall success, as well as the class itself. Aaron was deeply engaged with the complex social issues covered in this course, as demonstrated by his thoughtful and insightful written reflective essays. His contributions to the class discussions were equally thoughtful and pushed his classmates to think about the issues in important ways. Similarly, Aaron's ability to think critically and creatively helped to guide the direction of the project in important ways. In addition, Aaron did solid research for his sub-group on the legal cases challenging the California Values Act and made significant contributions to the LO's final work product. In addition, Aaron's work as part of the fact and cite-checking team ensured that the final work product was accurate and properly sourced. Aaron also did an excellent job as a member of the publicity team. Finally, Aaron was an important member of the LO with respect to the team's development and was well-respected by all members for his hard work and dependability in the LO.

Date: 5.5.2020 2:04PM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student: Dvorkin, Aaron
Exam #: 19082
Course Title: LSSC: Research & Writing
Course ID: LAW 6165
Credits: 2
Term: Fall 2019 Law Semester
Instructor : Ahmed, Sameer
Grade: High Honors

Course Description:

Competent and effective legal research and writing skills are the foundation for students' success in law school and in their legal careers. In LSSC's Legal Analysis, Research and Writing component, students learn about the organization of the American legal system, the sources and construction of laws, and how the application of laws may vary with the specific factual situation. Students learn how to research the law to find applicable legal rules, how to analyze and apply those rules to a factual situation, and how to communicate their legal analysis clearly and concisely to different audiences.

Performance Highlights:

LSSC: Research and Writing is a year-long course. Please refer to the Spring 2020 semester for the final evaluation.

Date: 6.9.2020 3:21PM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student:	Dvorkin, Aaron
Exam #:	19082
Course Title:	Legal Skills in Social Context
Course ID:	LAW 6160
Credits:	2
Term:	Fall 2019 Law Semester
Instructor :	Ahmed, Sameer
Grade:	High Honors

Course Description:

The LSSC Social Justice component immediately applies students' legal research and writing skills in using law as a tool for social change. LSSC links students' pre-law school thinking with the new legal culture in which they find themselves. In the first semester, they begin by forging their own team lawyering dynamic in discussing assigned readings and in preparing, and presenting, several advocacy exercises and written assignments. In the second semester, students apply and consolidate their new legal research and writing skills in addressing an intensive real-life social justice project for a selected client organization. LSSC student teams develop their legal and cooperative problem-solving skills and knowledge while producing real client work of a quality that far exceeds the ordinary expectations of first-year law students. May be repeated once.

Performance Highlights:

Legal Skills in Social Context is a year-long course. Please refer to the Spring 2020 semester for the final evaluation.

Date:	6.9.2020 3:08PM
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Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student: Dvorkin, Aaron
Exam #: 19082
Course Title: Torts
Course ID: LAW 6106
Credits: 4
Term: Fall 2019 Law Semester
Instructor : Hartzog, Woodrow
Grade: Honors

Course Description:

This course introduces students to theories of liability and the primary doctrines limiting liability, which are studied both doctrinally and in historical and social context. The course includes a brief consideration of civil remedies for intentional harms, but mainly focuses on the problem of accidental injury to persons and property. It also provides an introductory look at alternative systems for controlling risk and allocating the cost of accidents in advanced industrial societies.

Performance Highlights:

Demonstrated superb skill in organizing a cohesive analysis of a large, complex fact pattern with many tort issues.

Demonstrated satisfactory skill in identifying a majority of the important issues raised in the exam.

Demonstrated superb skill in articulating the rules and frameworks relevant to the tort issues raised in the exam.

Demonstrated satisfactory analytical skill in applying tort rules and frameworks to a complex fact pattern.

You did a good job participating in class. You were well prepared, professional, and thoughtful.

Date: 2.3.2020 10:06AM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student: Dvorkin, Aaron
Exam #: 19082
Course Title: Property
Course ID: LAW 6105
Credits: 4
Term: Fall 2019 Law Semester
Instructor : Swanson, Kara
Grade: Honors

Course Description:

This course covers the major doctrines in American property law, including trespass, servitudes, estates in land and future interests, landlord-tenant relationships, nuisance, and takings. Students are introduced to rules, policies, and current controversies.

Performance Highlights:

Demonstrated strong ability to understand and explain property law, using case law and statutes.

Demonstrated strong ability to identify issues in complicated fact patterns.

Demonstrated strong ability to analyze legal issues, predict or advocate for outcome, and justify conclusions with support.

Date: 1.21.2020 11:19AM

Northeastern University School of Law
416 Huntington Avenue
Boston, Massachusetts 02115

Student: Dvorkin, Aaron
Exam #: 19082
Course Title: Civil Procedure
Course ID: LAW 6100
Credits: 5
Term: Fall 2019 Law Semester
Instructor : Woo, Margaret
Grade: Honors

Course Description:

Introduces students to the procedural rules that courts in the United States use to handle noncriminal disputes. Designed to provide a working knowledge of the Federal Rules of Civil Procedure and typical state rules, along with an introduction to federalism, statutory analysis, advocacy, and methods of dispute resolution. Examines procedure within its historical context.

Performance Highlights:

Overall, you wrote a very good exam. You identified all the issues and discussed each with care. Your handling of the Erie doctrine was especially strong. In sum, you demonstrated a good understanding of the subject matter.

Date: 1.21.2020 11:02AM



Ruth A. Bourquin
Senior and Managing Attorney
(617) 482-3170 ext. 348
rbourquin@aclum.org

December 8, 2021

Re: Recommendation for Aaron Dvorkin for Judicial Clerkship

To Whom It May Concern:

I am writing most highly to recommend Aaron Dvorkin, Northeastern University School of Law, Class of 2022, for a judicial clerkship.

Aaron served as a full-time Legal Intern at the American Civil Liberties Union of Massachusetts, Inc. ("ACLUM") throughout the Fall 2021 semester during his third year of law school. I had the pleasure of being his direct supervisor and working closely with him on several legal matters.

Over my nearly 40 years of being an attorney, I have worked with and supervised many law students and Aaron stands out as being one of the most highly capable, mature and impressive among them.

Aaron's legal research, analysis and writing skills are exemplary. On multiple occasions, Aaron unearthed precedent and identified and powerfully articulated legal arguments – both for and against – legal positions our office was planning to make that have either caused us to rethink our positions or greatly bolstered them. For instance, his sophisticated analyses directly influenced our thinking with regard to whether vaccine mandates that do not provide for religious exemptions violate the free exercise clause of the First Amendment, arguments to be raised in a brief before the Supreme Judicial Court concerning when speech alone can qualify as voluntary manslaughter, and arguments made in multiple immigration matters pending in the federal courts.

Aaron is also one of the most productive and organized law students with whom I have ever worked. Notwithstanding that he always takes great care with each matter on which he is working, and was often asked to work on multiple matters at a time, he always delivered a comprehensive and high-quality work product in a timely manner. And he is a wonderful colleague, always willing to assist on a variety of matters and asking questions when appropriate. His compassion is evident both in how he interacts with his co-workers and his approach to the needs of our clients.

As someone who has now practiced law for a significant period of time and who served as a judicial clerk on the United States Court of Appeals for the Eleventh Circuit just after my graduation from Harvard Law School, I

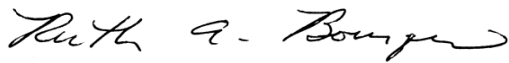
Page 2

Recommendation for Aaron Dvorkin – Judicial Clerkship
December 8, 2021

believe I have a good idea of the attributes that make for an excellent judicial clerk. Aaron Dvorkin possesses all of them. I therefore recommend him most highly.

If there are any questions I can answer or further information I can provide with regard to this recommendation, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, reading "Ruth A. Bourquin". The signature is written in a cursive, flowing style.

Ruth A. Bourquin

cc: Aaron Dvorkin

Page 3
Recommendation for Aaron Dvorkin – Judicial Clerkship
December 8, 2021

H A R V A R D L A W S C H O O L

CAMBRIDGE · MASSACHUSETTS · 02138

HARVARD IMMIGRATION AND
REFUGEE CLINICAL PROGRAM
Harvard Law School

6 Everett St.
Cambridge, MA 02138
617-384-0088

April 26, 2021

RE: Letter of Recommendation for Aaron Dvorkin

To Whom It May Concern:

I am writing to give my highest recommendation possible to Aaron Dvorkin to serve as a law clerk in your chambers.

Mr. Dvorkin was a student in my Legal Skills in Social Context class when I was a professor at Northeastern University School of Law. I currently teach at Harvard Law School. The Legal Skills in Social Context Program offers first-year law students an extraordinary opportunity to work with public interest organizations on a social justice project while gaining the core skills of effective team lawyering and a deeper knowledge of working on behalf of marginalized communities.

Mr. Dvorkin's performance in the legal research and writing component of the class was excellent. Mr. Dvorkin had strong analytical skills, including an ability to think creatively about the application of law to fact that will make him an excellent law clerk and effective advocate. Mr. Dvorkin consistently demonstrated strong research skills as well and had a clear ability to find and distill relevant authority in furtherance of his analysis. He also had very strong writing skills – his writing was always well-organized, clear, and concise, and he paid appropriate attention to detail with respect to formatting requirements and citation. Mr. Dvorkin's oral advocacy skills were impressive as well; in his final oral argument he demonstrated a very natural and strong court room presence and presented a compelling argument on behalf of his client. In short, Mr. Dvorkin possesses the intellect and skill to be an excellent law clerk and attorney.

As a part of the Legal Skills in Social Context course, a group of 14-15 law students, called a "Law Office" (LO), work together on a year-long social justice project on behalf of a community-based organization. Mr. Dvorkin was a member of an LO who worked on a project on behalf of the ACLU of Southern California. The aim of the project was to analyze the California Values Act, the State of California's novel "sanctuary" law protecting the state's immigrant population from excessive federal immigration enforcement. The project's goal was to draft a statewide report on the California Values Act after analyzing data received from the ACLU of Southern California, the state and federal cases challenging the California Values Act, and other publicly available data. In order to accomplish this goal, Mr. Dvorkin and his classmates conducted extensive research into the California Values Act, its implementation

throughout the state, and the reasons behind its implementation. As a whole, Mr. Dvorkin and his classmates were collaborative, collegial, and high-functioning. When working as a team, Mr. Dvorkin and his classmates remained focused on the necessary tasks, and were productive during their meetings, even when operating without faculty supervision. Their performance—individually, in sub-groups, and as a full group—was excellent, and it was evident in the final work product. The partner organization was impressed by Mr. Dvorkin and his classmates’ final work product and presentation and commented that the work far surpassed their expectations of first-year law students.

Mr. Dvorkin was a valuable member of the LO, who made significant contributions to the group’s overall success, as well as the class itself. Mr. Dvorkin was deeply engaged with the complex social issues covered in this course, as demonstrated by his thoughtful and insightful written reflective essays. His contributions to the class discussions were equally thoughtful and pushed his classmates to think about the issues in important ways. Similarly, Mr. Dvorkin’s ability to think critically and creatively helped to guide the direction of the project in important ways. In addition, Mr. Dvorkin did solid research for his sub-group on the legal cases challenging the California Values Act and made significant contributions to the LO’s final work product. Specifically, Mr. Dvorkin’s legal research, writing, and analysis of complex issues related to whether California cities could opt out of the requirements of the California Values Act was excellent. In addition, Mr. Dvorkin’s work as part of the fact and cite-checking team ensured that the final work product was accurate and properly sourced. Mr. Dvorkin also did an excellent job as a member of the publicity team, and even helped obtain the presence of state legislators at their final presentation. Finally, Mr. Dvorkin was an important member of the LO with respect to the team’s development and was well-respected by all members for his hard work and dependability in the LO.

Moreover, Mr. Dvorkin was consistently engaged in class, and his contributions were always thoughtful and insightful. I also very much appreciated the amount of thought he gave both to the project and to the underlying issues we addressed in class.

Through these experiences, I know first-hand that Mr. Dvorkin would bring so much as a law clerk for your chambers. As a former law clerk myself to the U.S. Court of Appeals for the First Circuit and the U.S. District Court for the District of Massachusetts, I also know that he has the legal skills to be an excellent clerk. Over the past decade, I have taught and advised law students from a variety of law schools, including Yale, Harvard, UCLA, UC-Irvine, NYU, and Northeastern. Mr. Dvorkin has been one of the best. I give him my strongest recommendation.

Best regards,



Sameer Ahmed

Clinical Instructor

Harvard Immigration and Refugee Clinical Program

Harvard Law School

(617) 384-0088

sahmed@law.harvard.edu

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND
FEDERAL BUILDING AND U.S. COURTHOUSE
PROVIDENCE, RHODE ISLAND 02903

John J. McConnell, Jr.

CHIEF JUDGE
401-752-7020

JUDGE_MCCONNELL@RID.USCOURTS.GOV

June 2, 2021

Re: Aaron Dvorkin

Dear Sir/Madam:

I write to recommend Aaron Dvorkin for a federal court law clerk position. Aaron interned in my chambers during the fall of 2020, and we have remained in touch since that time.

Internships in the time of Covid are not easy and it is as hard to supervise law students as it is for students to work remotely. Aaron performed exceedingly well under these conditions and was a very effective student intern. He collaborated with my law clerks and me, essentially acting as a third clerk. Aaron worked on several cases during his time, drafting memos to help prepare me for arguments and six draft opinions. His work product was always timely and thorough.

Aaron has outstanding research and writing skills. Although he only had completed only one year of law school when he interned in my chambers, he identified the critical issues and conducted the relevant research. His work product was organized, logical, and thorough. His selection to the Northeastern Law Review is a testament to his research and writing abilities.

Interpersonally, Aaron was a pleasure to work with. He gets along with everyone, regardless of age or life experience. I had a jury trial in the fall that Aaron was able to attend, and I observed that he was courteous and helpful to court staff and attorneys. He demonstrated high ethical standards and was always professional. I think these attributes will serve him well as a federal court law clerk.

I highly recommend Aaron for a law clerk position. Please do not hesitate to contact me if you have any questions.

Best Regards,



John J. McConnell, Jr.

Aaron Dvorkin

221 Chestnut Ave., Apt. 2, Boston, MA 02130 | 617-680-0093 | dvorkin.a@northeastern.edu

Writing Sample

The following is an excerpt from an order on a Motion for Partial Summary Judgment issued by Chief Judge John J. McConnell, Jr. of the United States District Court for the District of Rhode Island. The plaintiffs brought a negligence claim against their tax accountant for failing to adequately advise them of their tax filing options and for failing to timely file their taxes, which resulted in the IRS charging the plaintiffs with a penalty. The defendants asserted several affirmative defenses and the plaintiffs filed the motion asking the court to dismiss the portions of those defenses that asked the court to impute the negligence of third parties to the plaintiffs to reduce or bar their recovery. I authored the order, with the exception of the highlighted first paragraph in section (A)(3), and the court has given me permission to use it as a writing sample. The background section has been omitted from this excerpt.

505 F.Supp.3d 84

United States District Court, D. Rhode Island.

Dexter G. GOEI and Veronica De Piante Vicin, Plaintiff,

v.

CBIZ, INC.; CBIZ MHM, LLC; and Grafton H. Willey IV, Defendant.

C.A. No. 18-263-JJM-PAS

|

Signed 09/29/2020

MEMORANDUM AND ORDER

JOHN J. MCCONNELL, JR., United States District Court Chief Judge.

Plaintiffs' Motion for Partial Summary Judgment concerning three of the Defendants' affirmative defenses requires the Court to decide whether accountants sued for malpractice by their clients can attribute the alleged legal malpractice of the clients' lawyers to the clients such that it reduces the damages that the accountant must pay. The affirmative defenses at issue allege comparative negligence both for the attorneys' representation of Plaintiffs during a legal proceeding and for an alleged failure to properly advise their clients and Defendants. Rhode Island law dictates that attorneys' comparative negligence may be imputed to their clients to reduce or bar their recovery only if the attorney conduct at issue relates to managing a client's case. It makes no such opportunity available when attorneys act in advisory roles. For this reason, summary judgment is proper for the portion of the defenses that relate to the alleged negligence of the attorneys in their advisory roles. In addition, summary judgment is proper for the portion of the affirmative defenses relating to the attorneys' alleged negligence during their representation of Mr. Goei and Ms. De Piante Vicin because the attorneys' actions clearly met the low standard for defeating a failure to mitigate defense under Rhode Island law.

II. STANDARD OF REVIEW

When making a summary judgment determination, the Court must review the entire record and consider the facts and inferences in the light most favorable to the nonmoving party. *Cont'l Cas. Co. v. Canadian Univ. Ins. Co.*, 924 F.2d 370, 373 (1st Cir. 1991). Federal Rule of Procedure 56(a) dictates that summary judgment should be granted if "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." A genuine dispute of material fact is an issue that "may reasonably be resolved in favor of either party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). A dispute is "genuine" when "the evidence about the fact is such that a reasonable jury could resolve the point in favor of the nonmoving party." *Rivera-Muriente v. Agosto-Alicea*, 959 F.2d 349, 352 (1st Cir. 1992) (citing *United States v. One Parcel of Real Prop.*, 960 F.2d 200, 204 (1st Cir. 1992)). If there is a genuine dispute of a material fact, that dispute would "need[] to be resolved by a trier of fact." *Doe v. Trustees of Bos. Coll.*, 892 F.3d 67, 79 (1st Cir. 2018) (citing *Kelley v. LaForce*, 288 F.3d 1, 9 (1st Cir. 2002)).

III. DISCUSSION

In their Complaint, Plaintiffs assert one count for negligence/malpractice against all Defendants based on Mr. Willey's failure to advise them of their filing options and the consequences of failing to timely file and pay their 2014 taxes. Plaintiffs filed a Motion for Partial Summary Judgment on the portions of three of CBIZ's affirmative defenses that involve imputing the alleged negligence/malpractice of Mayer Brown in failing to advise and/or supervise Plaintiffs and Mr. Willey on these matters.² CBIZ objected (ECF No. 61) and the Goeis replied. ECF No. 65.

- 2 Plaintiffs filed a Motion for Partial Summary Judgment (ECF No. 47) in redacted form and filed an unredacted version under seal. ECF No. 52.

A. Choice-of-Law Analysis

This Court must first determine whether Rhode Island law or New York law governs the question of whether the Defendants may use “imputed comparative negligence” to reduce Plaintiffs’ recovery from CBIZ and Mr. Willey. Being a diversity case, the Court uses Rhode Island’s choice-of-law principles. *Ellington v. Davol, Inc.*, No. C.A. 007-470-ML, 2012 WL 2021908, at *1 (D.R.I. June 5, 2012). Rhode Island applies an “interest-weighting” test when the court must determine which state “bears the most significant relationship to the event and the parties.” *Taylor v. Mass. Flora Realty Inc.*, 840 A.2d 1126, 1128 (R.I. 2004) (quoting *Najarian v. National Amusements, Inc.*, 768 A.2d 1253, 1255 (R.I. 2001)). The general factors for the Court to consider in deciding which state has the most significant interest in the relevant issue are: (a) predictability of results; (b) maintenance of interstate and international order; (c) simplification of the judicial task; (d) advancement of the forum’s governmental interests; and (e) application of the better rule of law. *Woodward v. Stewart*, 104 R.I. 290, 300, 243 A.2d 917 (1968). Additionally, the Rhode Island Supreme Court has set forth these standards to be considered for choice-of-law analyses in tort cases: (a) the place where the injury occurred; (b) the place where the conduct causing the injury occurred; (c) the domicile, residence, nationality, place of incorporation and place of business of the parties; and (d) the place where the relationship, if any, between the parties is centered. *Harodite Indus., Inc. v. Warren Elec. Corp.*, 24 A.3d 514, 534 (R.I. 2011) (citation, internal quotation marks omitted). The Rhode Island Supreme Court has stated that “the most important factor is the location where the injury occurred.” *Taylor*, 840 A. 2d at 1128.

Moreover, Rhode Island adheres to the choice-of-law rules set out in the Restatement (Second) Conflicts of Law (“Restatement”). See *Aetna Cas. & Sur. Co. v. Protective Nat’l Ins. Co. of Omaha*, 93-CIV-023B, 1993 WL 489637, at *6 n.18 (D.R.I. July 27, 1993). This includes the concept of “dépeçage”, under which “[e]ach issue is to receive separate consideration if it is one which would be resolved differently under the local law rule of two or more of the potentially interested states.” Restatement (Second) Conflicts of Law cmt. on section (1)(d).

1. The Facts Relevant to the Choice-of-Law Analysis

A preliminary question presented by this motion is whether this Court may apply one state’s law to a claim against a defendant and another state’s law to an affirmative defense to the same claim. Other courts adopting Restatement § 145 have concluded that it is proper to do so. See, e.g., *Chi v. Loyola Univ. Med. Ctr.*, 787 F. Supp. 2d 797, 801-03 (N.D. Ill. 2011).

However, the facts relevant to this choice-of-law analysis are those related to Mr. Willey’s alleged negligent conduct, not Mayer Brown’s alleged contributory negligence. Plaintiffs object to the idea that a non-party attorney’s negligence may be imputed to a plaintiff to reduce or bar their recovery. ECF No. 47 at 2. This is the specific “issue” that must be separated out and given its own analysis for the purpose of the choice-of-law analysis. This issue relates to whether the law of comparative negligence in the accounting malpractice claim allows for a reduction to the malpractice of the plaintiffs’ attorney. Therefore, the Court should analyze this particular issue using the facts of the underlying accounting malpractice claim—not the potential legal malpractice claim.

2. Application of the General Interest-Weighing Test

The first interest this Court must consider, predictability of results, involves the parties’ reasonable expectations as to which

state's law would govern their liability when the alleged malpractice occurred. *See Turcotte v. Ford Motor Co.*, 494 F.2d 173, 178 n.6 (1st Cir. 1974). Because Mr. Willey practices in Rhode Island, he would have reasonably expected that Rhode Island law would govern any liability arising from his practice.

Next, the interest of maintaining interstate and international order pertains to “whether another state's law and policy would be ‘offended’ by application of Rhode Island law.” *Id.* at 178. There is no discernable reason why New York would have a special interest in having its imputed negligence doctrine apply to a case involving an allegation of accounting malpractice where the tortious conduct allegedly took place in Rhode Island and where the perpetrator is a Rhode Island resident.

The interest of simplifying the judicial task also favors Rhode Island law. It goes without saying that it is easier for this Court to apply Rhode Island law than New York law. *See Id.* at 178 n.6 (noting that it is simpler for a court to apply the law of its own state).

Furthermore, Rhode Island's governmental interest would be best advanced by application of Rhode Island law in this case. Rhode Island's public policy is to allow innocent plaintiffs to recover fully from their tortfeasor. *See Roberts-Robertson v. Lombardi*, 598 A.2d 1380, 1381 (R.I. 1991). Accordingly, it is in the state's best interest for this policy to govern alleged malpractice perpetrated by a Rhode Island professional in Rhode Island.

Rhode Island also has the better rule of law. Precluding the use of imputed negligence from reducing or barring a plaintiff's recovery ensures that they may recover the full amount they believe they are due in a single action. Defendants are free to implead a third party if they feel that the third party is liable for all or part of the alleged negligence of the Defendants.

3. Application of the Tort-Specific Interest-Weighing Factors

The injury and the conduct causing the injury occurred in Rhode Island. The relationship between the parties is centered in Rhode Island. Plaintiffs entered a contract with Mr. Willey, a certified accountant practicing in Rhode Island, for the filing of their 2014 tax returns. The place of the wrong is “considered to be the place where the last, event necessary to make the actor liable occurred.” *Dodson v. Ford Motor Co.*, No. C.A. PC 96-1331, 2006 WL 2642199, at *3 n.5 (R.I. Super. Sept. 5, 2006) (quoting *Kramer v. Showa Denko K.K.*, 929 F. Supp. 733, 741 (S.D.N.Y. 1996)). Here, Rhode Island was where the last event necessary to make the actor liable occurred. At the time, the Goei's were still living overseas, and Mr. Willey was practicing in Rhode Island. As the only parties are Plaintiffs and Defendants, the center of this relationship is Rhode Island. Therefore, Rhode Island is the place of the wrong.

Given that all the factors weigh in its favor, Rhode Island law applies to the imputed negligence issue presented by Plaintiffs' motion.

B. Defendants' Affirmative Defenses

Having established that Rhode Island law applies to this motion, this Court must now determine whether summary judgment is appropriate for the portions of CBIZ and Mr. Willey's affirmative defenses related to imputed negligence.

1. Whether Rhode Island Law Allows for Imputation of an Attorney's Comparative Negligence to Reduce or Bar a Plaintiff's Recovery

Rhode Island state courts allow the negligence of a third party to be imputed to plaintiffs to reduce or bar their recovery in certain situations but have established that doing so is not always acceptable. The Court must evaluate the issue here against

the backdrop of Rhode Island's public policies prohibiting juries from considering the negligence of non-parties, *see Roberts-Robertson v. Lombardi*, 598 A.2d 1380, 1381 (R.I. 1991), and allowing plaintiffs to recover fully for their negligence claims. *See L.A. Ray Realty v. Town Council of Town of Cumberland*, 698 A.2d 202, 213-14 (R.I. 1997). This Court will not create a new avenue to circumvent these rules absent clear evidence that Rhode Island state courts have established a basis for doing so. Accordingly, this Court must determine whether Mayer Brown's alleged negligence comports with any of the situations in which such imputation has been allowed.

Rhode Island state courts have refused to allow for imputation of a third party's negligence to reduce or bar a plaintiff's recovery in at least two situations. First, Rhode Island law prohibits imputing the contributory negligence of a driver to a passenger injured in a car accident when the passenger has no control over, or principal-agent relationship with the driver. *See, e.g., Hermann v. R.I. Co.*, 36 R.I. 447, 90 A. 813, 814 (1914). Second, the Rhode Island Supreme Court has declined to allow the negligence of third parties to be imputed to plaintiffs in personal injury cases where the plaintiffs themselves were not negligent. *See Dixon v. Royal Cab, Inc.*, 121 R.I. 110, 396 A.2d 930, 936 (1979) (citing *Gallo v. Simpson Spring Co.*, 55 R.I. 410, 181 A. 915, 918 (1935)).

Two situations in which the Rhode Island Supreme Court has adopted the imputed negligence rule are when the third party is in a "joint enterprise" with the plaintiff and when the third party is the plaintiff's "agent."

"In the law of negligence, the term 'common' or 'joint' enterprise means an association of two or more persons in the pursuit of a common purpose under such circumstances that *each has the authority, express or implied, to act for all* in respect to the control of the means of agencies employed to execute such common purpose." *Farrar v. Edgewood Yacht Club*, 111 R.I. 376, 302 A.2d 782, 784 (1973) (emphasis added). A New Jersey Supreme Court case cited with approval by the Rhode Island Supreme Court in *Najjar v. Horovitz*, 54 R.I. 224, 172 A. 255, 256 (1934) further clarifies that "[t]o constitute a common or joint enterprise within the rules as to imputed negligence, there should be . . . an equal right to direct and govern the movements and conduct of each other in respect thereto." *McGinley v. Winters*, 110 N.J.L. 540, 166 A. 166, 167 (1933). While Plaintiffs may have had the ability to "direct and govern" the actions of their legal counsel, there is no indication in the record that this authority went both ways. Accordingly, the record does not establish that the parties were part of a "joint enterprise."

Rhode Island law also recognizes that the negligence of a plaintiff's agent may be imputed to the plaintiff to reduce or bar their recovery. *See, e.g., Fisher v. Andrews & Pierce*, 76 R.I. 464, 72 A.2d 172, 173 (1950) ("[I]f defendant can show that the operator was acting as the agent or servant of the plaintiff at the time of the accident . . . then the doctrine of *respondeat superior* would operate and impute the negligence of the operator to the plaintiff."). CBIZ points to *King v. Brown*, 103 R.I. 154, 235 A.2d 874 (1967) in support of its position that an attorney is an agent of their clients. However, that case only established that such a relationship exists for work related to legal proceedings. The Rhode Island Supreme Court cited the Restatement (Second) of Agency § 253 as a basis for the "fundamental of agency law which imputes the neglect of an attorney in professional matters to his client and considers the omissions of the attorney as though they were the neglect of the client himself." 235 A.2d at 875. The relevant section of the Restatement reads: "A principal who authorizes a servant or other agent to institute or conduct such *legal proceedings* as in his judgment are lawful and desirable for the protection of the principal's interests is subject to liability to a person against whom proceedings reasonably adapted to accomplish the principal's purposes are tortiously brought by the agent." Restatement (Second) of Agency § 253 (Am. Law Inst. 1958) (emphasis added).³

³ *King* itself involved an attorney's failure to "comply with [a court's] procedural requirements." 235 A.2d at 875.

CBIZ contends that Mayer Brown was negligent in failing to advise or supervise Plaintiffs and Mr. Willey and in failing to raise certain arguments during their representation of Mr. Goei during the IRS appeal. Rhode Island law does not establish that the negligence of an attorney is imputed to their client for acts or omissions related to an advisory role. Accordingly, any failure to advise or supervise Mr. Willey is not imputable to Plaintiffs. However, the alleged negligence of Mayer Brown during their representation of Plaintiffs as part of the IRS appeal would be imputable given that it happened during a legal proceeding. The question then becomes whether there are other grounds upon which summary judgment should be granted for this part of

CBIZ's affirmative defenses.

*2. Whether a Genuine Dispute of Material Fact Exists Regarding
Mayer Brown's Alleged Failure to Mitigate During the IRS Appeal*

Even though Rhode Island law would generally allow for the alleged negligence of Mayer Brown attendant to its representation of Mr. Goei to be imputed to him, summary judgment on this portion of CBIZ's affirmative defenses is still appropriate, as Rhode Island law acknowledges that plaintiffs have a relatively low burden for defeating failure to mitigate defenses.

“With respect to mitigation, the plaintiff need only make reasonable efforts to mitigate damages; the burden is not ‘onerous and does not require him to be successful in mitigation.’” *Shoucair v. Brown Univ.*, No. Civ.A.-P096-2896, 2004 WL 2075159 at *12 (R.I. Super. Sept. 9, 2004); *see also Tomaino v. Concord Oil of Newport*, 709 A.2d 1016, 1026 (R.I. 1998).

Defendants contend that Mayer Brown's decision to not pursue a retroactive extension for the late filing of Mr. Goei's tax returns constitutes a “failure to mitigate” any damages incurred because of Mr. Willey's conduct. However, the fact that a plaintiff does not need to be successful in mitigating damages suggests that we need not parse the strategy or decision-making of Mayer Brown in its failure to ask the IRS for a retroactive extension for Plaintiffs or its subsequent decision to not pursue this argument after being apprised of its availability to them. Mayer Brown did enough during the appeal to obtain a reduction in the penalty. ECF No. 48 at ¶ 54. This is sufficient on its own to meet the low bar for overcoming a “failure to mitigate” defense in Rhode Island. As such, there is no genuine dispute of material fact regarding this portion of CBIZ's affirmative defenses.

IV. CONCLUSION

For these reasons, both prongs of CBIZ and Mr. Willey's affirmative defenses related to imputed negligence fail as a matter of law. Accordingly, the Court GRANTS Mr. Goei and Ms. De Piante Vicin's Motion for Partial Summary Judgment as to the portions of CBIZ and Mr. Willey's affirmative defenses related to imputed negligence. ECF Nos. 47 and 52.

IT IS SO ORDERED.

Applicant Details

First Name **Dario**
 Last Name **Dzananovic**
 Citizenship Status **U. S. Citizen**
 Email Address dario.dzananovic@gmail.com
 Address

Address
Street 416 Sierra Lane
City Bolingbrook
State/Territory Illinois
Zip 60440
Country United States

Contact Phone Number **(312) 519-7578**

Applicant Education

BA/BS From **University of Illinois-Urbana-Champaign**
 Date of BA/BS **May 2011**
 JD/LLB From **DePaul University College of Law**
http://nalplawsonline.org/ndlsdir_search_results.asp?lscd=31402&yr=2011
 Date of JD/LLB **May 1, 2014**
 LLM From **Other**
 Date of LLM **May 1, 2014**
 Class Rank **5%**
 Does the law school have a Law Review/Journal? **Yes**
 Law Review/Journal **No**
 Moot Court Experience **Yes**
 Moot Court Name(s)

Bar Admission

Admission(s) **Illinois**

Prior Judicial Experience

Judicial
Internships/ **Yes**
Externships
Post-graduate
Judicial Law **No**
Clerk

Specialized Work Experience

Specialized Work
Experience **Prison Litigation**

Recommenders

Guild, Elspeth
eg42143@gmail.com
Grutters, Carolus
c.grutters@jur.ru.nl
+31243615701

References

Hon. William J. Bauer
Seventh Circuit Court of Appeals
312-435-5850

Myron M. Cherry
Myron M. Cherry & Associates
312-372-2100

Craig Mousin
University Omboudsperson
DePaul University College of Law
312-362-8707

Paul Minderhoud

Professor of Law
Radboud University Nijmegen (NL)
p.minderhoud@jur.ru.nl

This applicant has certified that all data entered in this profile and any application documents are true and correct.

August 21, 2020

The Honorable Elizabeth Hanes
 Spottswood W. Robinson III & Robert R. Merhige, Jr.
 U.S. Courthouse
 701 East Broad Street, 5th Floor
 Richmond, VA 23219

Dear Judge Hanes:

I write to express sincere interest in the term clerk position in your chambers starting in August 2021. Over the past four years, I have split my time between completing a Ph.D. in comparative migration law in Europe, and working in an Of Counsel capacity with a law firm in the Chicago area. In my Ph.D. project, I have studied how both governmental and nongovernmental actors shape migration law and policy in the United States and the Netherlands. My research has confirmed that the governance of migration, though constitutionally relegated to the central government in both countries, is, in practice, better understood as a network of governance comprising many types of actors. I have begun to publish the results of my research, and you can find several listed on my resume. I intend to submit two more articles to international journals for publication this year.

In the past four years, I have also worked for a boutique litigation firm located in Naperville, Illinois. While I was not usually able to attend court proceedings and take depositions (due to geographical limitations), I have conducted copious amounts of research in preparing complaints, motions, and briefs in a variety of cases. These have included personal injury matters, 1983 actions, class actions, and other matters. I have sharpened my Westlaw skills with respect to materials concerning both court documents and academic publications.

Prior to embarking on my Ph.D. journey in January 2016, I worked for a boutique litigation firm in the Chicago loop that concentrated its work on class actions. I worked exclusively on class action civil rights and consumer protection cases. While at that firm, I attended court proceedings, including hearings on motions and statuses, both alone and with co-counsel. The majority of the cases were in the Northern District of Illinois. A couple were in the chancery division in state court.

Prior to my work at that boutique litigation firm, I worked as associate general counsel for a venture capital firm in River North (Chicago). Most of the work was transactional, and I was heavily involved in drafting subscription agreements and negotiating contracts with investee companies. That was my first position out of law school.

I graduated *summa cum laude* from DePaul University College of Law in 2014, where I was also elected to the Order of the Coif. I received the CALI Award for Excellence in Legal Writing for the highest grade in my section during my first year of law school, and was subsequently selected to be a teaching assistant for legal writing. In addition to teaching the students, I perfected my bluebooking skills during that time. In my final year of law school, I spent the Fall semester in the Netherlands pursuing an LL.M. in human rights and migration law. Because most of my courses at DePaul were concentrated in business law, I wanted to learn about a completely different area of law. I followed courses in European Union law, receiving the highest grade in at least one course. When I returned to finish my last semester at DePaul in Spring of 2014, I wrote my LL.M. thesis, completed a judicial externship with Judge Bauer (Seventh Circuit), and finished my J.D. coursework, including a trial advocacy course which I thoroughly enjoyed and excelled in. The judicial externship with Judge Bauer was an invaluable experience, and my first foray into researching and preparing bench memoranda on various appeals.

In short, I offer a skillset that has been developed through my experiences both in the practice of law and in academia. The skillset includes ample research and writing experience in a variety of legal fields. In the next stage of my career, I wish to further hone my research and writing skills while learning more about litigation and courtroom procedure. I would like to learn how judges reason and think through cases, what they consider in rendering decisions, and what they believe effective courtroom strategies are that lead to the best results for clients. I believe that working for you would help me realize my goals, and I would look forward to the opportunity to put my research and writing skills to work as a law clerk in your chambers.

I have enclosed a copy of my resume, writing sample, and transcripts for your review. I am happy to provide further writing samples if you would find them useful in your decision. Due to travels, I can be most easily reached at my email address. I look forward to discussing this opportunity further with you at your convenience. Thank you for your consideration.

Sincerely,

Dario Dzananovic